

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 JULIE MILLER,

4 Plaintiff,

5 v.

6 EQUIFAX INFORMATION SERVICES,  
7 LLC, a foreign limited liability  
company,

8 Defendant.

)

)

)

)

)

)

)

)

)

)

)

)

Case No. 3:11-CV-1231-BR

July 23, 2013

Volume 1

Portland, Oregon

9  
10 TRANSCRIPT OF PROCEEDINGS

11 (Jury Trial - Day 1)

12  
13 BEFORE THE HONORABLE ANNA J. BROWN, DISTRICT JUDGE  
14  
15  
16  
17  
18  
19  
20  
21  
22

23 COURT REPORTER:

AMANDA M. LeGORE, RDR, CRR, FCRR, CE  
U.S. COURTHOUSE  
1000 SW Third Avenue, Suite 301  
Portland, OR 97204  
(503)326-8184  
24  
25

1 APPEARANCES:

2 FOR THE PLAINTIFF:

MICHAEL BAXTER  
JUSTIN BAXTER  
Baxter & Baxter, LLP  
8835 SW Canyon Lane, Suite 130  
Portland, OR 97225  
(503)297-9031  
michael@baxterlaw.com  
justin@baxterlaw.com

7 FOR THE DEFENDANT:

JEFFREY EDELSON  
Markowitz, Herbold, et al.,  
1211 SW Fifth Avenue  
Suite 3000  
Portland, OR 97204  
(503)295-3085  
jeffedelson@mhgm.com

11  
12 PHYLLIS SUMNER  
LEWIS PERLING  
King & Spalding, LLP  
1180 Peachtree Street, NE  
Suite 1700  
Atlanta, GA 30309  
(404)572-4799  
psumner@kslaw.com  
lperling@kslaw.com

## INDEX

## Page

## Opening Statements

By Mr. Michael Baxter..... 59

By Ms. Sumner..... 80

## Witness Index

## FOR THE PLAINTIFF:

Julie Miller

Direct  
104Cross  
158ReDirect  
178ReCross

-oOo-

1 (Tuesday, July 23, 2013; 8:30 a.m.)

2

3 P R O C E E D I N G S

4

5 THE COURT: Okay. So, officially, good morning,  
6 everyone.

7 MS. SUMNER: Good morning, your Honor.

8 MR. JUSTIN BAXTER: Good morning, Judge.

9 THE COURT: We are here for trial in the case of  
10 Julie Miller versus Equifax Information Services, LLC.

11 Is Ms. Miller here?

12 MR. JUSTIN BAXTER: She is, your Honor.

13 THE COURT: Good morning. Why don't you come  
14 forward, and take a seat at the table.

15 Isn't she going to be with you?

16 MR. JUSTIN BAXTER: She will be, Judge.

17 THE COURT: We'll need a name tag for her, Ms. Boyer.  
18 Good morning, Ms. Miller.

19 MS. MILLER: Good morning.

20 THE COURT: Go ahead and take a seat.

21 Mr. Baxter, is the plaintiff ready to proceed?

22 MR. JUSTIN BAXTER: We're ready to go, Judge.

23 THE COURT: And, Ms. Sumner, is the defendant ready  
24 to proceed?

25 MS. SUMNER: We are, your Honor. I will say our

1 corporate representative will be here prior to when we select a  
2 jury.

3 THE COURT: And his name?

4 MS. SUMNER: Her name is Margaret Leslie.

5 THE COURT: Her name. Okay. Thank you.

6 MS. SUMNER: And she will be here shortly.

7 Thank you.

8 THE COURT: So I just want the record to show that  
9 since we were last in session yesterday, I assembled a version  
10 of -- at least my first version, my first draft of proposed  
11 jury instructions.

12 And that I from those, this morning, prepared a  
13 proposed form of verdict. It is clear to me we're still not on  
14 the same page, despite the work we have done Friday and  
15 yesterday, and we need to be on the first page before we  
16 start -- on the same page before we start with jury selection.

17 That means we need to start with the verdict form,  
18 which is really where we should have been at the beginning of  
19 the pretrial conference on Friday. It's very difficult to make  
20 rulings and to be consistent, going forward, if we don't have  
21 an agreed path as to what the jury is supposed to be deciding.

22 One of the points that I want to clarify, which I  
23 think is fundamental, is something I thought we agreed to  
24 yesterday, Mr. Baxter, and that was that a -- a negligence  
25 finding is necessarily subsumed within any willfulness finding.

1 I thought we agreed that it would necessarily be the  
2 case that in order for the jury to find defendant acted  
3 willfully in any particular respect, the jury would have to  
4 have found that the defendant acted negligently in violating  
5 the act.

6 Am I wrong on that point?

7 MR. JUSTIN BAXTER: No, your Honor. I think what I  
8 had said yesterday is I don't think the two are mutually  
9 exclusive. I think the jury could return a verdict for both.  
10 But if the jury found willful, they could award damages --  
11 compensatory damages and punitive damages. They wouldn't have  
12 to --

13 THE COURT: Well, let me look at it. Let me have you  
14 look at it this way, the way I charted it out on the verdict  
15 form, and tell me if you think that is an erroneous approach.

16 I began with the premise that the plaintiff has to  
17 prove the negligence claims. We start with question 1, as I  
18 framed it: Did plaintiff prove defendant negligently violated  
19 FCRA in one or more of the four ways that are specified.

20 Do you agree that that's the starting point?

21 MR. JUSTIN BAXTER: That's fine.

22 THE COURT: We may fuss with the language a bit. As  
23 I say, I've roughed this out. But I'm trying, again, to get --  
24 confirmed that we're all on the same analytical page.

25 So we start with a finding whether plaintiff proved

1 any negligent violation.

2 Now, my thinking was that if the answer to that  
3 question was no, the case is over. That in the absence of a  
4 finding of negligence on one or more of the four claims, there  
5 could not be a finding of willfulness.

6 Am I right there?

7 MR. JUSTIN BAXTER: No, I don't think that's correct,  
8 Judge.

9 THE COURT: All right.

10 MR. JUSTIN BAXTER: I think that the first question  
11 is did they violate the act. Then the second question is then  
12 the mental state.

13 So then --

14 THE COURT: No, it's not, sir.

15 I am not going to approach the jury with a vague  
16 assertion of violation and then ask them which mental state or  
17 states applied.

18 You have two -- two simultaneous claims that you're  
19 prosecuting. One is for a negligent violation and one is for  
20 willful violation. And it will be hopelessly confusing to the  
21 jury if you are not specific and if I'm not requiring adherence  
22 to elements as to particular claims.

23 This is what I've been trying to direct you all  
24 through since Friday, and we're evidently still not  
25 communicating.

1           So in the instructions I sent you yesterday, I set  
2 out four claims for relief somewhat consistently with what you  
3 all gave me yesterday. Those four claims for relief were for  
4 negligent violations. Right?

5           MR. JUSTIN BAXTER: Correct.

6           THE COURT: My point is, plaintiff alleges Equifax  
7 violated the Fair Credit Reporting Act negligently in four  
8 different ways.

9           Correct?

10          MR. JUSTIN BAXTER: Correct.

11          THE COURT: Plaintiff also alleges that Equifax  
12 violated the Fair Credit Reporting Act willfully in four  
13 separate ways.

14          MR. JUSTIN BAXTER: Correct.

15          THE COURT: Your contention is that a no finding on a  
16 negligence -- negligent violation does not preclude a yes  
17 finding on a willful violation.

18          MR. JUSTIN BAXTER: That's our contention, yes.

19          THE COURT: Okay. Let me see if the defendant agrees  
20 with you, in which case -- as I say I've been on a different  
21 analytical course.

22          What's the defendant's position on this issue?

23          MS. SUMNER: Your Honor, we understood all along that  
24 negligence is required first, and that as a part of that, they  
25 would have to prove damages. And in the verdict forms that we



1 have submitted to you previously, the parties agreed to that  
2 concept.

3 So I'm -- it's not clear to me why they are objecting  
4 at this point, because I understood that would be the case.

5 THE COURT: Well, that's not what we're talking about  
6 now. What we're talking about now is what is the law.

7 I'm done trying to meld you all together. Because  
8 after two full days of proceedings and a lot of paper, you're  
9 still not on the same page.

10 My question to you simply is this: Is a finding of a  
11 negligent violation necessary before a finding of a willful  
12 violation when the two claims -- when the two mental states are  
13 tried simultaneously for the same violation, yes or no?

14 MS. SUMNER: Yes.

15 THE COURT: Do you have authority for that  
16 proposition?

17 MS. SUMNER: I don't at my fingertips, but I can  
18 certainly look at that and then get back to you --

19 THE COURT: No. My question is do you know of  
20 authority on that, even though you can't cite it?

21 MS. SUMNER: I do not, at my fingertips, your Honor.

22 THE COURT: What is theoretically wrong with  
23 Mr. Baxter's assertion that you could have a finding of  
24 willfulness for a particular claim -- say Claim 1 -- without a  
25 finding of negligence on that claim?

1 MS. SUMNER: Your Honor, it's our understanding that  
2 as part of the elements required to find negligence, that they  
3 would have to find actual damages. In this case, it would be  
4 the noneconomic damages --

5 THE COURT: You're not listening to me, or at least  
6 I'm not making myself clear.

7 My question is whether a negligence claim is  
8 necessarily a negligence -- a negligent mental state is  
9 necessarily subsumed within the willful violation, the elements  
10 of a willful violation. Or if you assume, say, only one claim,  
11 Claim 1, and I instruct the jury as to the elements of a  
12 negligent violation and the jury answered no, Equifax was not  
13 negligent in the manner alleged, could the jury necessarily  
14 find that -- or nevertheless find that Equifax was responsible  
15 for a willful violation of that same claim?

16 MS. SUMNER: (Nods head.)

17 THE COURT: That's what I'm trying to understand.

18 MS. SUMNER: I apologize, your Honor. I think I  
19 understand your point now.

20 My answer is that they would have to find negligent  
21 first. Particularly in this circumstance, where plaintiff is  
22 arguing reckless disregard, which is a greater standard than  
23 the mere negligence standard.

24 THE COURT: That's really still not responsive.

25 The question is, in theory, could Equifax be

1 proceeding with a willful mental state if plaintiff proves the  
2 willful violation? Is there something inconsistent with a no  
3 finding that Equifax acted negligently in the same way?

4 In other words, is a failure to use reasonable care  
5 or the failure to act as a reasonably careful credit reporting  
6 agency a precursor to a finding that not only was it negligent,  
7 it was willful? Are they subsumed or are they -- can they  
8 exist independently and inconsistently? Because that's a total  
9 different analysis that would have to be explained to the jury.

10 MS. SUMNER: Our position is that they are subsumed,  
11 and that the definition of willfulness supports that. That  
12 they would have to find the negligence first. And if they do  
13 not, that they would not move on to willfulness.

14 THE COURT: Mr. Baxter, are you aware of any case, in  
15 any kind of tort setting, where a jury was permitted to  
16 consider willful misconduct when they've found there wasn't  
17 even negligent misconduct?

18 MR. JUSTIN BAXTER: No, Judge. Your Honor, I have  
19 authority for -- for our position.

20 It's the statute. Section O says if a consumer  
21 proves a negligent violation, they get damages. Section N says  
22 if they prove -- the consumer shows a willful violation, they  
23 get damages and punitive damages -- or that's submitted to the  
24 jury.

25 THE COURT: But that seems, to me, to be consistent

1 with the premise I've been pursuing, and that is that you have  
2 to have at least established a negligent violation before you  
3 can have a willful violation. Which is why on the verdict  
4 form, as I've been thinking this through -- and as I handed it  
5 to you just now -- the jury would be instructed that if they  
6 answer no to question 1, the case is over because if you fail  
7 to prove Equifax acted at least negligently, how can a jury  
8 rationally find on the same record that Equifax acted  
9 willfully?

10 Do you see what I'm saying?

11 MR. JUSTIN BAXTER: I understand. And I --

12 THE COURT: My point is am I logically -- am I not on  
13 the right track here or --

14 MR. JUSTIN BAXTER: Well, I probably should have  
15 started with the premise that the format of this -- where we  
16 are today, I think the format of this verdict is acceptable to  
17 me.

18 THE COURT: The one I'm handing to you?

19 MR. JUSTIN BAXTER: Yes.

20 THE COURT: Well, that says to tell the jury the case  
21 is over if you don't get a yes answer on question 1. And I  
22 need you to tell me if you contend that's wrong legally or it's  
23 correct legally. Or whether you're just satisfied with it.

24 MR. JUSTIN BAXTER: I'm satisfied with it.

25 THE COURT: Okay. Then we won't have an issue on

1 appeal about it.

2 MR. JUSTIN BAXTER: Correct.

3 THE COURT: All right. Then the first question the  
4 jury will be asked is a form of the question 1 I gave you,  
5 which is, in part, a form of the way you gave it to me, but  
6 we'll fuss with the actual words later.

7 I just want to be sure I have the basic logical legal  
8 framework worked out before I ask a juror to come into the  
9 room.

10 So, now, I have departed again in -- in the order of  
11 questions, from what you suggested. Because I believe that if  
12 the jury answers yes to question 1, they should then focus on  
13 answering what are the plaintiff's noneconomic damages arising  
14 from the negligent violation or violations that they find by  
15 answering yes to question 1.

16 Is there any problem with that approach?

17 MR. JUSTIN BAXTER: That approach is fine, Judge. I  
18 would ask the Court to strike the word "noneconomic," and use  
19 the word of the statute, which is --

20 THE COURT: You want "actual damages"?

21 MR. JUSTIN BAXTER: Right.

22 THE COURT: Well, I'll -- I get that. I will work  
23 through that with you, the wording of it.

24 But let's just call it compensatory for the moment,  
25 because actual damages can be noneconomic or they can be

1 economic. Here, actual damages are only noneconomic.

2 Do we want to just call them actual damages, knowing  
3 in our heads that it really is just noneconomic damages, and  
4 defining it in the words of noneconomic damages, without  
5 getting into all of the other labels?

6 I don't much care because we're not going to be  
7 introducing the notion of economic damages, and we're going to  
8 be defining noneconomic -- I should say, actual damages as  
9 those subjective nonmonetary losses incurred by the plaintiff  
10 as a result of the defendant's alleged wrongful conduct that  
11 they find was proved.

12 Do you care?

13 MS. SUMNER: It would be our preference that we  
14 reference noneconomic because they have conceded that there are  
15 no economic damages --

16 THE COURT: Well, why does the jury need to know the  
17 noneconomic label when the statute speaks of actual damages? I  
18 think we're in agreement as to what categories can be  
19 considered by the jury for actual damages. Basically, the  
20 definition of noneconomic.

21 I'm trying to avoid introducing terms that could be  
22 confusing. And if we all mean the same thing by actual damages  
23 and I define that to the jury in a way that's legally correct,  
24 that we'll work through -- I haven't included one of your  
25 categories. The privacy thing. I'm not -- no, I can't

1 remember which one. But we'll get to that.

2 But if -- if we're all focusing on actual damages,  
3 knowing that they equal a legal definition of noneconomic  
4 damages, then I can avoid using different terms that could  
5 confuse the jury.

6 Is there anything legally wrong with that?

7 MS. SUMNER: No, your Honor. I just think because we  
8 are only focused on noneconomic, that it helps the jury focus  
9 on what is at issue. That would be the basis for our request.

10 THE COURT: All right. We're not going to use the  
11 word "compensatory."

12 MS. SUMNER: Okay.

13 THE COURT: We'll try to figure out a way not to  
14 confuse them, by using the statutory language "actual damages,"  
15 and the conceptual definition "noneconomic damages," but I'll  
16 work with that.

17 Okay. So Question 1 and Question 2, in theory, are  
18 in the proper order. Right?

19 MS. SUMNER: We agree, your Honor.

20 THE COURT: Both sides?

21 MR. JUSTIN BAXTER: Yes.

22 THE COURT: Okay. So then -- then we -- then my next  
23 conceptual question is this.

24 As to 3, I'm directing the jury back to being sure  
25 that when they consider willful violations, they consider that

1 willful issue only as to any negligent violation they found by  
2 answering yes to question 1.

3 So I wanted to be sure, Mr. Baxter, you saw that  
4 that's what I thought was required, and that you continue to  
5 agree that that's, in principle, consistent and correct, given  
6 how we're proceeding with question 1.

7 MR. JUSTIN BAXTER: Yes. That's fine, Judge.

8 THE COURT: And so we would -- we would just then  
9 have a total of five questions, not six.

10 There was a lot of parsing on the six-question  
11 verdict form: Was liability proved, were actual damages  
12 proved, was willfulness proved, was -- you know. So I combined  
13 one of them. I think this is still conceptually legally  
14 correct.

15 MS. SUMNER: I think this does streamline it, your  
16 Honor, and --

17 THE COURT: I will work a little more with the  
18 language before I try to sit you all down. And I don't quite  
19 know when we can do that.

20 Perhaps, depending on how long jury selection takes,  
21 perhaps each side can designate one person to work with me for  
22 about 20 minutes over the noon hour to work through some of the  
23 wordsmithing before we use a lot of time on the record to  
24 actually challenge concepts.

25 Now, briefly, were there legal correctness issues



1 that are of initial concern in the draft of jury instructions  
2 that I sent you late last night?

3 Mr. Baxter?

4 MR. JUSTIN BAXTER: Judge, there were a few minor  
5 edits, but no major omissions.

6 THE COURT: Edits we'll take care of later. But I  
7 just want to make sure if I've missed -- here's one concern I  
8 had about the punitive damage language, and I -- I'm not sure I  
9 have a complete statement here.

10 But you know the law has those three categories.  
11 And, really, we shouldn't be instructing the jury with respect  
12 to any category of reprehensibility or punitive conduct that  
13 doesn't exist. So -- for example, I think it's the definition  
14 of oppression that talks about basically harm to the public  
15 welfare; physical harm, those sorts of things. And we need to  
16 pay attention to exactly what category and definitional  
17 construct ought to be in the final jury instruction around  
18 punitive damages.

19 The model instruction assumes it all. And, you know,  
20 an economic case that involves the integrity of a person's  
21 financial health may not qualify for that public well -- health  
22 and welfare sort of language that is in the standard  
23 instruction. So that's one thing I'll want to wordsmith with  
24 you to be sure we get that right.

25 And if there are typos in it, those are all of my

1 problem since I'm the author. We'll take those up in due  
2 course.

3 Substantively, were there concerns you needed to  
4 alert me to, so that I don't start off with the jury on -- on a  
5 tack you object to legally?

6 MS. SUMNER: Your Honor, I think that we would  
7 request the attorneys fees instruction. It's not in your  
8 version. We thought that was pretty important, so that the  
9 jurors --

10 THE COURT: It is. It is.

11 MS. SUMNER: It is? I'm sorry. Maybe I missed that.

12 THE COURT: It's in the definition of -- in fact, I  
13 put it in over my own objection. I normally don't do that.

14 MS. SUMNER: Well, I should sit down then, your  
15 Honor.

16 THE COURT: It's there. I know you're trying to rule  
17 out the jury thinking that they need to compensate Ms. Miller  
18 for her attorneys and --

19 MS. SUMNER: Yes.

20 THE COURT: And I've said that I will do that in the  
21 event the verdict warrants that. But it is there.

22 MS. SUMNER: And the only other issue, your Honor, is  
23 that we just want to take -- have a chance to think about the  
24 substantial factor instruction. That that is --

25 THE COURT: Here was the problem I had around your

1 instructions. You all melded the law -- the common law of  
2 proximate cause and proximate causation language and the  
3 substantial factor causation language. It really would be very  
4 confusing to a juror to have both.

5 We have one formulation of causation. Substantial  
6 factor seems to be the correct definition. It's a cause if  
7 it's a substantial factor, which is an important one and not  
8 one that is insignificant.

9 All of that proximate cause, **Palsgraf** legalese has  
10 always been, I think, inherently confusing to jurors, and I  
11 have steered away from using it unless I'm required to as a  
12 matter of substantive law.

13 So if in the context of the Fair Credit Reporting Act  
14 substantial factor is not the right causation standard, then  
15 show me the authority that says that. But the problem I have  
16 with the way you all phrased it is that you threw multiple  
17 concepts of causation into your proposed language. And that  
18 was, in my mind, not helpful to the jury.

19 MS. SUMNER: Then, your Honor, we would simply ask --  
20 and forgive me, if this is in here. But the -- we have a very  
21 brief instruction on harm caused by others, which I think does  
22 apply --

23 THE COURT: I think that is also in there, but we'll  
24 look for it when we do our editorializing through the language.

25 MS. SUMNER: Okay. Thank you. Generally, your

1 Honor --

2 THE COURT: But in sum, we're on the right track,  
3 anyway?

4 MS. SUMNER: Yes. Thank you.

5 THE COURT: Okay. Very good.

6 Now, before we call for the jury, are there issues  
7 you want to deal with this morning, or are we ready to actually  
8 bring the jury in?

9 Yes, Mr. Edelson.

10 MR. EDELSON: Would you just -- would you like us to  
11 stand for the jury? I know different judges have different  
12 views on that, as they come and go.

13 THE COURT: We'll pick a plan.

14 There isn't a formal rule in this district. I think,  
15 anecdotally, different judges have implemented different plans.  
16 What I don't want is a situation where some people are doing  
17 one thing and some are doing others. It's confusing and  
18 potentially embarrassing.

19 The last trial I just finished a couple of weeks ago  
20 in a criminal case, we had the jury standing -- I'm sorry. We  
21 had everybody standing every time the jury came in and out.  
22 But that's because most of the lawyers were going to stand up  
23 impulsively anyway, and we wanted everyone to do it the same  
24 way.

25 I really don't care. I think jurors may see it as a

1 sign of respect. You know, like you -- you're required to  
2 stand initially when a judge enters.

3 I don't take it personally. But, you know, they  
4 might see it as an additional sort of sign of the importance of  
5 this proceeding.

6 I will do whatever you like to do, so long as you  
7 agree.

8 Do you have a preference, Mr. Baxter?

9 MR. JUSTIN BAXTER: We prefer to stand, Judge.

10 MS. SUMNER: Agreed.

11 THE COURT: And that's the Georgia plan, yes?

12 MS. SUMNER: Yes, it is.

13 THE COURT: So I will announce every time the jury is  
14 coming in, "All rise for the jury," and then you'll have your  
15 cue.

16 All right. This must be Ms. Leslie.

17 MS. SUMNER: Correct, your Honor. Margaret Leslie,  
18 vice president of technology.

19 MR. PERLING: Would it be okay, your Honor, if I sat  
20 at this table with Ms. Leslie for now?

21 THE COURT: Sure. Sure. Right.

22 Here -- here is -- I mean, if it turns out  
23 Mr. Edelson is not going to be here for the main  
24 presentation -- and I haven't heard what your choice was --  
25 then it probably -- the three of you can sit there.

1           If it's going to be four of you most of the time, you  
2 ought to figure out a way that you're not crowding each other.  
3 Yes, you can bleed over to that space.

4           The jurors like to see these name tags. We've had  
5 feedback from them repeatedly that despite introductions, they  
6 don't remember who is who. And in this last trial, the jurors  
7 actually complained that the lawyers didn't introduce themselves  
8 often enough.

9           I'm just saying. There were eight lawyers there, so  
10 maybe that might have been the problem. But I think they'll  
11 pretty much figure out who you all are.

12           It's not that hard, within an hour or two.

13           Okay. We're -- let's get a seat for Ms. Leslie, and  
14 work this out.

15           MR. JUSTIN BAXTER: Your Honor, I had one item.

16           THE COURT: Yes.

17           MR. JUSTIN BAXTER: We -- the parties have completed  
18 the trial -- the exhibit notebooks that we discussed yesterday.

19           THE COURT: Yes.

20           MR. JUSTIN BAXTER: So we have those prepared for the  
21 Court and for counsel and for the jurors.

22           Our preference, for plaintiff, is to hand them out  
23 after opening statements. We're going to show the jury the  
24 specific demonstratives that we want to show them. And we  
25 prefer them not to be leafing through the books during opening

1 statement.

2 THE COURT: All right. So what you're telling me is  
3 that you have come to an agreement that the jury may have in  
4 the possession of each of the trial jurors a notebook that has  
5 some -- or all?

6 MR. JUSTIN BAXTER: All.

7 THE COURT: All of the presently agreed-to exhibits?

8 MR. JUSTIN BAXTER: Correct.

9 MS. SUMNER: And that is one -- there is one item we  
10 should address, your Honor, because you had requested -- and we  
11 did pull out the inserts to the manuals. So our plan is, to  
12 the extent appropriate, we may show them the volume of the  
13 manuals. But we now have only in the jury books the excerpts  
14 that we would direct them to during examination.

15 THE COURT: Are you anticipating additional exhibits  
16 will be received in evidence during the trial? And in that  
17 case, are you anticipating supplementing or adding to what the  
18 jury has as their personal record? Or not?

19 MR. JUSTIN BAXTER: (Shakes head.)

20 MS. SUMNER: Your Honor, it is possible. But I will  
21 have to say it's been a while since I've used notebooks. But  
22 in the past, when doing so, we've always required the jurors to  
23 leave the notebooks under their chairs at the end of the trial,  
24 and then we have worked with the courtroom deputy if additional  
25 exhibits need --

1 THE COURT: No, I mean, at the end of the evidence  
2 and before deliberation. Are you intending the jurors -- we'll  
3 just deal with it. It won't be that many. We'll figure out  
4 what to do. And then you're going to have an official set,  
5 despite -- in addition to the one the jurors have?

6 I would like to be able to tell them that they're  
7 free to mark on what they have. It's their personal copy and  
8 not the official -- official exhibit.

9 MS. SUMNER: That's fine.

10 THE COURT: Okay. Okay. Good.

11 Solved that.

12 Yes?

13 (Pause, Court and clerk conferring.)

14 THE COURT: Ms. Boyer is inquiring how to describe  
15 Ms. Leslie on her name chart.

16 She is what?

17 MS. SUMNER: She is the Equifax vice president of  
18 technology.

19 THE COURT: That's a lot to put on a little name  
20 chart. So what do you want? Defendant -- Equifax's  
21 representative? How's that?

22 MS. SUMNER: That's fine. We will obviously  
23 introduce who she is.

24 THE COURT: Right. But I meant on a label, so that  
25 she's not seen as the unidentified person here.



1           Okay. All right. Are we ready for bringing up the  
2 jury then, folks?

3           Plaintiff is?

4           MR. JUSTIN BAXTER: Plaintiff is ready.

5           THE COURT: And are you all ready?

6           MS. SUMNER: We are ready, your Honor. Thank you.

7           THE CLERK: And the jurors are ready.

8           THE COURT: Okay. Bring them up, please. Let's get  
9 started.

10           At the appropriate time in voir dire, then, I'll just  
11 have one person from each side of the case introduce everybody  
12 you want introduced on the team.

13           So, Mr. Baxter, you seem to be the one on your feet  
14 most of the time. Do you want to be the introducer?

15           Or, Mr. Baxter, do you?

16           MR. JUSTIN BAXTER: It will be my father.

17           THE COURT: All right. He'll introduce you. And  
18 then, Ms. Summer, you'll be the introducer?

19           MS. SUMNER: Actually, I was going to ask Mr. Edelson  
20 to do that.

21           THE COURT: Finally, meaningful participation. A  
22 little joke.

23           Okay. So how many jurors are we expecting, Bonnie?

24           THE CLERK: She called 25.

25           THE COURT: Okay. So we'll see. All right.

1 MR. PERLING: Your Honor, since we do have this  
2 unique situation, where I'm going to be sitting away from my  
3 co-counsel, could we have -- when it comes time to start our  
4 deliberations on the jurors, could we have a few minutes to  
5 confer, so I can come back around?

6 THE COURT: The jury's going to be out of the room.  
7 Nobody's going to really care where you're positioned at that  
8 point.

9 (Pause.)

10 MS. SUMNER: At some point, we want to make sure  
11 we're properly connected. Should we do that now or should we  
12 wait?

13 THE COURT: You're definitely going to have a recess  
14 before opening statement. At least the jury will be out of the  
15 room, while you're -- we're picking them, so we'll be okay.

16 MS. SUMNER: Okay.

17 (Pause.)

18 MR. EDELSON: Your Honor, one other item. I just  
19 wanted to confirm that witnesses are excluded until they've  
20 completed their testimony.

21 THE COURT: No one has addressed that.  
22 Is there a Motion to Exclude Witnesses?

23 MR. EDELSON: We so move.

24 THE COURT: Any objection to that?

25 MR. JUSTIN BAXTER: No objection, Judge.

1 I'll ask Mr. Miller to take a seat outside the  
2 courtroom.

3 THE COURT: Is Mr. Miller Ms. Miller's husband? Yes?

4 MR. JUSTIN BAXTER: Yes.

5 THE COURT: And he is going to testify?

6 MR. JUSTIN BAXTER: He is.

7 THE COURT: All right. So, Mr. Miller, sir, you'll  
8 need to wait outside.

9 If there's any other witness in the room, that person  
10 should wait outside, too.

11 No witness should talk to another witness about  
12 what's going on in the courtroom. You're free to talk to the  
13 lawyers. After your testimony, you're free to come back, if  
14 you're not going to be called again.

15 So, sorry, Mr. Miller.

16 Go ahead and step on out.

17 (Pause.)

18 (Whereupon jury selection was held but not requested  
19 to be transcribed herein.)

20 (Presiding jurors sworn.)

21 THE COURT: Yes, or I do.

22 THE JURORS: Yes.

23 THE COURT: Very good. Each of you said yes? Yes.

24 Okay. That's a very important step, because what  
25 you're undertaking now is the official responsibility to be the

1 judges here in this case.

2 Now, let me tell you a little bit about scheduling,  
3 so I can help plan the day as we go forward.

4 I have about 15 minutes or so of some basic  
5 introductory instructions. The next step in the trial is  
6 opening statements.

7 That will be a statement by one of the lawyers for  
8 each of the parties, ahead of the evidence, to give you a  
9 preview from each side's perspective about what they think you  
10 should be listening for as the evidence comes in.

11 Now, one of the choices I need to make is managing  
12 the time around our lunch break. You'll definitely get lunch.  
13 We're not going to be working you all day without a lunch  
14 break.

15 The really open question at the moment is whether I  
16 instruct and then we take a lunch break, or whether I instruct  
17 and we take one opening statement and then a lunch break.

18 Do any of you have any particular strong preference?  
19 Would you rather have your lunch break in about 15 minutes or  
20 in about -- oh, I see a nod. So we'll do that.

21 See, jurors get to make a decision. If no one acts,  
22 then we'll do that first.

23 So I'm going to give you an instruction. I need you  
24 to listen patiently through that. Then we'll take the lunch  
25 recess, which will be about an hour. And then when you're

1 back, we'll start with opening statements from each of the  
2 lawyers. And then we'll begin with the evidence.

3 So let me first make the point that everything we've  
4 talked about, up till now, was intended to help you help us get  
5 you picked, but none of it proves anything. You haven't yet  
6 heard any evidence. Evidence will come from the witness stand,  
7 from witnesses under oath, who will be answering questions in  
8 front of you. And it will come to you in the form of exhibits,  
9 documents, things, records that are already received as  
10 evidence or will be offered as evidence during the trial and  
11 then received in your presence.

12 So there's one other kind of evidence in the case,  
13 and that's in the form of any agreed facts that the parties  
14 point out to you or I point out to you.

15 So once it's determined that a point of fact is  
16 actually agreed to, then nobody needs to prove it with a  
17 witness. All right?

18 So evidence comes in three sources; witness stand,  
19 exhibits that are received, or admitted facts.

20 You and you alone will review that evidence, that  
21 body of material at the end of the case. And you and you alone  
22 will decide who to believe and what is proved or not proved.

23 Once you decide what the facts are, you'll apply to  
24 those facts the law that I give to you, whether you agree with  
25 the law or not, and that's basically how you reach a verdict.

1           Just to recap, in federal court, it is required that  
2 all verdicts returned are unanimous; meaning all eight jurors  
3 have to agree on whatever verdict is returned.

4           And in this case there will be a verdict form that  
5 asks a number of questions. In a particular logical order,  
6 usually phrased like, Did plaintiff -- in this case,  
7 Ms. Miller -- prove a certain point, yes or no.

8           And then there will be directions. I call them red  
9 light/green light directions. If it's one answer, you go one  
10 direction. If it's another answer, you go another. So we'll  
11 lay it out logically for you. All right?

12           Now, I want to review some basic areas of law.

13           Please don't be concerned that you're not writing any  
14 of this down. All of the instructions that will be the final  
15 instructions that you use during your deliberation each of you  
16 will have a copy of, fully written out. So you don't need to  
17 worry about remembering any of this.

18           I'm simply wanting to give you some basic orientation  
19 about the legal rules that control your -- your view of the  
20 evidence and how you conduct yourself and the substantive law,  
21 so that you know what to expect of you and it isn't just given  
22 to you at the end, after you've already heard the evidence.

23           I want you to understand that you're going to be  
24 asked questions about whether the plaintiff proved her claim,  
25 and I'll summarize what those claims are now. They'll be

1 summarized again in opening statement. They'll be laid out for  
2 you in the final instructions. And they'll be on the verdict  
3 form. So there will be, as I say, a written record, and a  
4 summary of what you need to do.

5 Now, the function of a jury, as I said earlier, is to  
6 be the final judge of the evidence, to decide what the facts  
7 are.

8 After we go through the trial as I've described it --  
9 the opening statements of the attorneys, the testimony of the  
10 witnesses -- we'll then have a situation where the lawyers will  
11 be able to speak to you again in what's called closing  
12 arguments. Because Ms. Miller has the burden of proof, she  
13 goes first in every phase of the trial.

14 So her lawyers, one of them, will make an opening  
15 statement first. Her side will call the witnesses first.  
16 Equifax's counsel will be able to cross-examine her witnesses.  
17 And then once the next witness comes up, we'll just do this in  
18 order until Ms. Miller has offered all of the evidence she  
19 wants to offer.

20 Then the tables turn. Equifax gets an opportunity to  
21 offer evidence it wants to offer that isn't already in the  
22 case, and they'll be asking questions first. All right?

23 When we get to closing arguments, Ms. Miller's  
24 lawyer, again, will address you first. But because she has the  
25 burden of proof, they'll also get a rebuttal argument, meaning,

1 after Equifax's counsel argues, they'll get to stand up one  
2 more time. I'm give the final instructions about your  
3 deliberations, and then the case will be yours.

4 So when that happens, it will be your duty to weigh  
5 and to evaluate all of the evidence calmly and dispassionately;  
6 to decide how believable the evidence is; and in that process,  
7 to decide what the facts are.

8 You are free to draw reasonable inferences from the  
9 evidence, as long as those inferences and conclusions are based  
10 on common sense and experience. But you're never allowed to  
11 guess or to base a finding of fact on speculation or  
12 conjecture.

13 You must not allow bias, sympathy, or prejudice any  
14 place in your deliberations, because all parties -- these two  
15 included -- are equal before the law.

16 Ms. Miller, and a corporation like Equifax, are  
17 entitled to the same fair and conscientious treatment as you  
18 consider the evidence and ultimately as you return a verdict.

19 Once you decide what the facts are, then you'll apply  
20 to those facts the law that I give to you, whether you agree  
21 with the law or not. This is just as you promised to do in the  
22 oath you just took.

23 You'll have to follow all of the instructions I give  
24 and not seize upon a single word or a single sentence, single  
25 out some and ignore others. It's intended to be a



1 comprehensive set.

2 Now, because your verdict must be based only on the  
3 evidence and on the law that I give you, you must not be  
4 exposed to any other information about the case or to its  
5 issues.

6 So except for discussing it among yourselves when the  
7 case is in your hands for deliberation, do not communicate with  
8 anyone in any way. And do not let anyone else communicate with  
9 you in any way about the merits of the case, or anything to do  
10 with it. This includes discussing the case in person, in  
11 writing, by phone, or electronic means; via e-mail, text  
12 messaging, or in any Internet chat room, blog, website, or  
13 other feature such as Facebook. I have a friend judge who  
14 says, Or anything else that's invented before the end of the  
15 trial. (Laughter.)

16 The point is, we communicate a lot of things a lot of  
17 ways. While you're a juror, you're not permitted to give out  
18 information or to receive information about the case.

19 You may have noticed nationally coverage around  
20 jurors who are blogging about the case they're sitting on,  
21 during the case. That can't happen.

22 Some judges, in desperation, around the country, have  
23 taken to taking devices away from jurors just to ensure that  
24 nothing like that happens. That's not going to happen here. I  
25 trust you not to do what I've explained you shouldn't do. You

1 need to just insulate yourself from information around the  
2 case.

3           Around the building, you need to avoid the parties.  
4 You'll be given a juror button to wear. That designates you as  
5 the special people you are in the building.

6           And the lawyers who use the building know they should  
7 stand away from you in the elevator and not be talking about  
8 cases around you. These parties know who you are, and they'll  
9 stay a distance from you. It's not that they're being rude.  
10 They're just not supposed to engage with you. All right?

11           So, despite my instruction, if anything comes your  
12 way about the case, if someone says, Oh, you're a juror on that  
13 case involving Equifax. What do you think? Or did you know --  
14 you stop them right then. You tell them, Stop. I'm a juror.  
15 Don't talk to me about it. And then you report it to me,  
16 through Ms. Boyer or any other means.

17           If someone persists with that, even after you've  
18 warned them, that that's especially serious, and I will need to  
19 know so I can take action.

20           Now, when you have a break, you're going to want to  
21 call home, or your office, or whomever, to let them know you've  
22 been seated on -- on this jury, and that's fine.

23           Tell them you've been seated on a jury in a civil  
24 case, and the judge has ordered you not to discuss it. Nine  
25 times out of ten you'll be then asked, Oh, what kind of civil

1 case have you been seated on? And your response is, The judge  
2 has ordered me not to talk about it, and to report to her if  
3 people keep asking. (Laughter.) That usually puts it to rest.

4 It's a little humorous way to deal with it, but it's  
5 very serious business here.

6 Why? Because these parties are entitled to have a  
7 fair trial, based on the same evidence that they know you have.  
8 If you had outside information that they didn't know about and  
9 didn't have an opportunity to challenge, it would be  
10 fundamentally unfair. You would have information that clearly  
11 could affect how you view the evidence, and that's not right.  
12 If something like that happened, we would have to start over,  
13 declare a mistrial, bring in another panel. And, you know, all  
14 of the expense and effort that the parties have gone through to  
15 get ready for today would be all for naught.

16 So it's very important that you observe this  
17 instruction. It only exists for the length of the trial. It  
18 will only be a few days. When it's over, you're free to say to  
19 whomever you want whatever you want about the case.

20 I only ask that you always respect the privacy of  
21 your fellow jurors. Because what goes on during deliberations  
22 is your business. And the private impressions and views of one  
23 juror really should not be communicated by other jurors to the  
24 outside world. You're free to express your own opinions about  
25 things, but let people speak for themselves if and when you

1 choose to talk. Okay?

2 So enough about that. Don't do any research. Don't  
3 go to the Internet. Don't be looking up Equifax or try to find  
4 information about the Fair Credit Reporting Act. The case  
5 rises or falls on whatever's presented to you. It's either  
6 enough or it isn't, and that's the way it goes.

7 So I've told you what evidence is. Now, let me tell  
8 you what is not evidence.

9 Everything we've done up to the part where you were  
10 sworn as a juror is not evidence.

11 You can't count on anything that was said during jury  
12 selection in deciding who and what to believe or in how you  
13 return your verdict. The arguments, the statements and the  
14 questions the lawyers ask of the witnesses are not evidence.  
15 The lawyers are not witnesses. What they do say in their  
16 opening statements, in this closing arguments, and at other  
17 times -- even when they question a witness -- is intended to  
18 help you interpret the evidence; but it isn't the evidence.  
19 The evidence is the answer to the question, not what the lawyer  
20 said that is the question.

21 If you at any point remember differently the  
22 testimony of a witness, as opposed to how the lawyers describe  
23 it to you, you rely on your memory. They're advocates.  
24 They're doing the best they can to present the case from their  
25 client's perspective. But any differences are resolved by you

1 and not them.

2 Now, from time to time in any trial, a lawyer may  
3 make an objection, which is a cue to me that I need to make a  
4 legal ruling about whether a question can be answered or  
5 whether certain evidence can be received.

6 Don't worry about why a lawyer is objecting. If I  
7 had to stop to explain the legal history of that kind of  
8 objection or why it's important, you would be here a lot longer  
9 than three days, and you don't want -- want that. Just trust  
10 me that I will rule on the objection.

11 If I overrule the objection, then forget that it  
12 happened, the question will get answered, and the evidence will  
13 come in just like all of the other evidence. And you'll  
14 consider it with everything else, at the end of the case.

15 But if I sustain an objection, that's the equivalent  
16 of my saying, jurors, forget that you ever heard the question  
17 or the answer. Disregard what has just happened. A sustained  
18 objection means disregard it, don't consider it in your  
19 deliberations.

20 And please don't guess about what the witness would  
21 have said, had the witness not been stopped before answering  
22 the question. Okay?

23 Now, it may not just be an objection. From time to  
24 time things happen that I have to direct your attention away  
25 from. If something happens that you're not entitled to

1 consider, I'll alert you to it, and I'll tell you to disregard  
2 it.

3 Finally, anything you might see out of the courtroom,  
4 when court is not in session -- even if it involves the  
5 parties, the lawyers, or the people in this case -- that's not  
6 evidence. So don't let it affect how you view the evidence at  
7 the end of the case.

8 This evidence -- the testimony, the exhibits, the  
9 agreed facts -- fall into two categories in the law. We call  
10 them direct evidence or circumstantial evidence.

11 Direct evidence is the direct proof of a fact, such  
12 as the testimony of an eyewitness about what that witness  
13 personally saw or heard or did.

14 Circumstantial evidence is indirect evidence. That  
15 is, the proof of one or more facts from which you could find by  
16 inference that another fact exists, even though that other fact  
17 hasn't been proved directly.

18 It's the reason and commonsense approach that I was  
19 speaking to Mr. Peck about during jury selection.

20 So you have direct evidence, you have circumstantial  
21 evidence. The law doesn't prefer one over the other. You're  
22 entitled to determine what weight that you will give to any  
23 particular piece of evidence, whether it's direct or  
24 circumstantial.

25 Now, when the witnesses testify, you'll have to

1 decide what testimony to believe and what testimony you may  
2 choose not to believe. You are free to believe everything a  
3 witness says, or part of it, or none of it. In fact, the  
4 testimony of any one witness whom you believe is enough to  
5 prove any fact in dispute.

6 So don't simply count up the number of witnesses for  
7 or against a proposition, but weigh and evaluate the testimony  
8 of each witnesses, so you can decide for yourself who and what  
9 to believe.

10 In doing that, you should consider the opportunity  
11 and the ability of the witness to see or to hear or to know the  
12 things testified to, the witness's memory, the witness's manner  
13 while testifying, whether the witness has any interest in the  
14 outcome of the case and therefore might have a bias or a  
15 prejudice that affects the reliability of the witness's  
16 testimony. You should consider whether there is other more  
17 persuasive evidence that contradicts a particular witness's  
18 testimony. And you should consider the reasonableness of the  
19 witness's testimony, in light of all of the evidence.

20 You'll be hearing from one witness at least, and  
21 maybe more, but at least one witness who's not -- who's not an  
22 eyewitness to the event. But he's a person who's going to be  
23 permitted to offer opinions about certain of the issues in the  
24 case.

25 That's permitted because the witness may, because of

1 his education or experience, have the foundation from which to  
2 offer you information that you might not otherwise have about  
3 the subject of credit reporting, and so forth.

4           You're to evaluate an opinion witness like that, just  
5 like you would the testimony of any other witness. You may  
6 accept it or reject it. You may give it however much weight  
7 you think it deserves, after you consider the reasons the  
8 witness gives for the opinion, his education, and his  
9 experience.

10           Most of the witnesses will testify live from the  
11 witness stand. There is, in one case, testimony that's going  
12 to be presented to you by so-called deposition.

13           A deposition is simply a question-and-answer process  
14 under oath that's like courtroom testimony. It's just happened  
15 before today. And in this case the witness won't be here live.  
16 But parts of that witness's prior testimony -- questions and  
17 answers -- will be written -- read to you. You're to consider  
18 that and evaluate it just like you would the testimony of any  
19 live witness.

20           Now, Ms. Miller, as indicated, is a consumer and an  
21 individual and clearly she can speak for herself.

22           Equifax is a corporation, however. And it can only  
23 act through employees, agents, directors, or officers. As a  
24 corporation, it's responsible for the acts and -- of its  
25 employees, agents, directors, and officers that are performed



1 within the scope of that person's authority.

2 So you should consider the acts and statements of any  
3 of the defendant's officers, agents, or employees as the  
4 statements of the defendant if those statements were made  
5 within the scope of that person's duties for the defendant.

6 I've already covered for you in introduction the  
7 notion of burden of proof. In this case, Ms. Miller has the  
8 burden to prove her claims and every element of them by a  
9 preponderance of the evidence, and in the absence of that  
10 proof, she cannot prevail.

11 Defendant has the opportunity to challenge the  
12 evidence Ms. Miller is bringing and to bring its own evidence,  
13 but it doesn't have any kind of burden to prove anything. So  
14 just keep that orientation in mind.

15 Preponderance of the evidence then. The standard  
16 that applies here means the greater weight of the evidence.  
17 It's that evidence, when compared with what opposes it has more  
18 convincing force, is more probably true than not.

19 So Ms. Miller has the burden to prove each of the  
20 elements of her claims by this preponderance of the evidence.  
21 She has to show it's more probably true than not that Equifax  
22 violated the Fair Credit Reporting Act in one or more of the  
23 ways she's alleged.

24 And that as a result of that violation, she sustained  
25 damage. A substantial factor in the cause of that damage being

1 the violation. So it has to be a breach of the statute, more  
2 probably true than not. That that more probably true than not  
3 caused her damage in this case in the form of what's called  
4 actual damages or noneconomic damages. There isn't any receipt  
5 or out-of-pocket invoice because she hasn't made a claim for  
6 lost money or lost -- or costs incurred. What she's asserting  
7 is that she sustained emotional distress, humiliation, an  
8 invasion of her privacy, and these sorts of subjective  
9 concerns. But don't take it from me. Wait until you hear from  
10 her and from her counsel about the nature of the damages she  
11 alleges. She has to prove those by a preponderance of the  
12 evidence.

13 I've talked with you about the notion of negligence  
14 and of willful conduct. Let me first just summarize again what  
15 it is specifically Ms. Miller alleges Equifax did that violated  
16 the Fair Credit Reporting Act.

17 Now, each one of these alleged violations has certain  
18 subparts. I'm not going to lay them all out now, but think of  
19 it this way.

20 There are four claims, and I'm going to lay out the  
21 four theories here. But within each theory there's proof of  
22 several elements: Two, or three, or four, and I'll lay those  
23 all out for you. All of them have to be proved in order for  
24 the plaintiff to prevail. Okay?

25 And that means all eight of you have to agree on the

1 same claim that is violated. She doesn't have to prove all  
2 four were violated. She has to prove at least one. She could  
3 prove all four.

4 But the minimum is that she convinces all eight of  
5 you that the elements of at least one single claim, the same  
6 single claim, was proved.

7 So as to those four claims, she alleges Equifax,  
8 which is a consumer reporting agency with certain duties and  
9 responsibilities under the Fair Credit Reporting Act, she  
10 alleges it negligently violated the act in one or more of the  
11 following four ways.

12 First, by furnishing her consumer credit report to  
13 persons or businesses who did not have a permissible purpose to  
14 receive the report.

15 Second, by failing to follow reasonable procedures to  
16 assure the maximum possible accuracy of the information  
17 contained in her credit report.

18 Third, by failing to disclose to her the entire  
19 contents of her credit file, upon her request.

20 And, fourth, by failing to conduct a reasonable  
21 reinvestigation of disputed information in her credit file,  
22 after she notified the defendant of the disputed information.

23 Now, I'll give you more particulars about what the  
24 statute requires, but this is sort of the headline, so you  
25 can -- you can kind of organize what the lawyers tell you in

1 their opening statement in advance.

2 Four claims, each has its own elements. In order to  
3 recover, the plaintiff has to prove all of the elements of at  
4 least the same one claim to all eight of you by a preponderance  
5 of the evidence.

6 As indicated, she alleges she was damaged by way of  
7 emotional distress, humiliation, mental anguish, and loss of  
8 reputation that she asserts she suffered as a result of the  
9 defendant's alleged violations.

10 She also contends that Equifax acted willfully in  
11 violating her rights under the Fair Credit Reporting Act. She  
12 seeks, as I mentioned earlier, an award of punitive damages to  
13 punish the defendant for these allegedly willful violations of  
14 the act and to deter the defendant and others from similar  
15 misconduct in the future. Now, that's a summary of her claims.

16 For Equifax's part, it denies it violated the Fair  
17 Credit Reporting Act, either negligently or willfully. It  
18 denies it caused Ms. Miller any damage. And to the extent she  
19 proves there has been any emotional distress or humiliation or  
20 anguish or loss of reputation associated with her credit  
21 information, they assert that that was not caused by the  
22 defendant but by other entities. So that's -- that's a general  
23 framework of what it is that's being claimed.

24 Let me tell you that negligence -- let me just define  
25 a couple of terms up front, and then you'll have them before

1 you again and again.

2           The term "consumer report" is a key term in the  
3 statute. It's also known as a consumer credit report. It's  
4 any communication by a consumer credit reporting agency like  
5 Equifax to a third party that bears on the consumer's  
6 creditworthiness and which is used in establishing a consumer's  
7 eligibility for credit, or for other purposes defined by the  
8 Fair Credit Reporting Act.

9           A consumer report is different, however, from a file  
10 disclosure under the act. Under that act, all consumers have a  
11 right to request a copy of the information appearing about them  
12 in a consumer reporting agency's database.

13           The act requires consumer reporting agencies, such as  
14 the defendant, to disclose to the consumer, upon request, all  
15 of the information in the consumer's file. The report  
16 generated by the agency in response to such a request is called  
17 a file disclosure.

18           A file disclosure must contain certain additional  
19 information and must disclose all instances where a particular  
20 consumer reporting agency furnished the consumer's report to a  
21 third party. These are called inquiries. And to make the --  
22 that is in order to make the consumer aware of the information  
23 contained in the consumer reporting agency's files. So those  
24 are just a couple of key terms.

25           Now, as to the concept of negligence. Remember

1 Ms. Miller alleges Equifax was negligent in the way it violated  
2 the Fair Credit Reporting Act.

3 In the context of this case, negligence means doing  
4 something which a reasonably prudent consumer reporting agency  
5 would not do, or failing to do something which a reasonably  
6 prudent consumer reporting agency would do under the same or  
7 similar circumstances which you find existed in this case.

8 In deciding what a reasonably prudent consumer  
9 reporting agency would or would not do in the circumstances of  
10 each of plaintiff's claims, you'll need to balance the risk of  
11 potential harm to the plaintiff from the particular violation  
12 alleged against the burden on the defendant of safeguarding  
13 against such improper conduct.

14 But if a consumer reporting agency accurately  
15 transcribes, stores, and communicates consumer information  
16 received from a source that it reasonably believes to be  
17 reputable and which is credible on its face, the credit  
18 reporting agency is not negligent simply by reporting an item  
19 of information that turns out to inaccurate.

20 Moreover, the law does not require a consumer  
21 reporting agency to be error-free in performing its obligations  
22 under the act. And the law recognizes that perfect accuracy in  
23 consumer credit reports is not a realistic objective.

24 I told you that the plaintiff has the burden to prove  
25 that the alleged violations by the defendant caused her harm.

1 So that term "cause" has a legal definition. It means  
2 substantial other factor. The defendant's conduct, in  
3 violating the statute, was a substantial factor in causing the  
4 harm she alleges. A substantial factor is one that is material  
5 and not insignificant.

6 So I think that's enough of the general overall.

7 You'll get more of the details filled in at the  
8 appropriate time at the end of the case.

9 So remember, plaintiff goes first. We're going to  
10 hear evidence, as we already projected for you, perhaps a  
11 little bit out of order. It's important that you keep an open  
12 mind. Wait until you've heard all of the witnesses, you've  
13 heard about all of the exhibits, and then you finally have a  
14 chance to talk with each other about the case.

15 To assist you, the parties have agreed that you  
16 should each have a binder of the key exhibits. Probably most  
17 of the exhibits. So those will be waiting for you when you get  
18 back.

19 They're for your use, if you want, while you -- while  
20 you're listening to the evidence, to take notes. If that's  
21 distracting to you, to look through the papers, then don't --  
22 don't concern yourself with it. It's just there as a resource,  
23 if you find it helpful.

24 Some people don't like to have physical papers in  
25 front of them. They really want to focus on what a person is

1 saying. Others would like to see and touch and mark on what's  
2 being talked about when it's being talked about. It will be  
3 your preference.

4 We also have an electronic display evidence here in  
5 the courtroom. Probably the very documents that are being  
6 talked about, that will be in your book, will also be on the  
7 screen. So things will be pointed to.

8 You know, if all of this is too distracting and you  
9 need something clarified while we're going forward, please let  
10 me know.

11 This is not a case where you're going to be asking  
12 questions of the witnesses, but I do need you to be aware that  
13 you can let us know if you miss something, if you didn't hear a  
14 witness's answer, if something got in your way when they were  
15 demonstrating it. If -- or if, like every other human being,  
16 you had a passing thought and you just missed what was going  
17 on, it -- it's important that you get all of the evidence when  
18 it comes in. So let me know, if you need something repeated.  
19 Okay?

20 Now, Ms. Boyer is going to take you to the jury room  
21 you'll be using for this case. It's literally behind this  
22 wall, to my right.

23 And that's the room where you will be reporting to  
24 and the room you'll be using while you serve on the jury in  
25 this case. You don't need to go back to the main jury room.



1           This is secure space back here, meaning the door to  
2 the hallway that leads to it is locked and only people  
3 associated with my chambers or the judge next door and you will  
4 be behind here. So you don't need to worry that you'll be  
5 bumping into witnesses, or whatever. It's the best place for  
6 you to be waiting when you come in the building, as opposed to  
7 being out in the common areas, where you might encounter a  
8 witness.

9           All right. I think I've talked enough.

10           Do any of you have any particular questions or  
11 concerns logistically?

12           Yes, Mr. Peterson.

13           JUROR NO. 8: Just wondering if we could take notes.

14           THE COURT: Oh, I forgot to cover that. Yes,  
15 absolutely. We'll have notepads and pens waiting for you here.

16           We'll have you keep your notes in the courtroom,  
17 during all of the breaks, so that they're here when you get  
18 back, and you're not like me and leave them somewhere else; and  
19 then that's frustrating. But, yes, you'll be free to take  
20 notes.

21           Notes, though, are an aid to help you remember, but  
22 none of us should look at notes as if they're the absolute  
23 transcript of whatever anybody said. So if the notes conflict  
24 with a juror's memory of what was said, you should rely on your  
25 memory and not the notes. They're intended to help refresh

1 your memory, but not a substitute for them.

2 Okay. So it's straight-up noon. We'll take a lunch  
3 break.

4 We'll resume, for your purposes, at 1:15. Okay?  
5 We'll take a break, midafternoon. We'll adjourn at a logical  
6 time. Somewhere in the 4:30, 4:45 range.

7 My hope is to get you out of the building a little  
8 before 5:00, so that if you're taking public transit, and so  
9 forth, you're not immediately caught in the downtown crush.

10 Will we have coffee this afternoon?

11 THE CLERK: (Nods head.)

12 THE COURT: All right. So we'll have coffee in the  
13 jury room.

14 For those of you who are connoisseurs of fine coffee,  
15 just know that it's good coffee, but it's institutional. If  
16 you want to bring something else, you're free to do that.  
17 You're free to bring any beverage of your choice -- that is  
18 nonalcoholic -- into the jury box. You know, if you bring a  
19 soft drink or a -- whatever. If you would like that and if it  
20 will help you keep attentive, please -- please feel free to do  
21 that. Okay?

22 Anything else?

23 All right. Jurors, please follow Ms. Boyer. Take a  
24 little more direction from her. And be ready in the jury room,  
25 here at 1:15, and we'll have you in the courtroom just then.

1 Okay? Take all of your possessions with you now.

2 Thank you, everyone, for standing for the jury.

3 (Jurors exit.)

4 THE COURT: So as will be my habit at every break, is  
5 there anything for the record at this point, that we need to  
6 address? For plaintiff? For the defendant?

7 MR. MICHAEL BAXTER: No, your Honor.

8 MS. SUMNER: No, your Honor.

9 THE COURT: Okay. Will you all be back at one  
10 o'clock, please.

11 MS. SUMNER: Yes.

12 THE COURT: I'm going to see what I can do to redraft  
13 these instruction and verdict forms, and maybe we can talk  
14 about some things, maybe not. But if you're here at 1:00, we  
15 can cover what's anticipated for the afternoon, if you have any  
16 issues. Okay?

17 MR. MICHAEL BAXTER: Thank you.

18 THE COURT: See you at 1:00.

19 Thank you, everybody.

20 MS. SUMNER: Your Honor, it's fine for us to leave in  
21 the courtroom --

22 THE COURT: The courtroom -- do you want the  
23 courtroom left unlocked? If you do, we have to tell the  
24 marshal; otherwise they'll lock them up just for security.

25 MS. SUMNER: I would prefer the court to be locked.

1 THE COURT: Yes. We'll have the courtroom locked.  
2 Has Ms. Boyer told you about the locking cabinets  
3 over here?

4 I'll get her to explain, but there are locking  
5 cabinets. You can get keys. You can store things overnight.

6 MS. SUMNER: Great.

7 THE COURT: But no one else is going to be using the  
8 room over the break. There isn't another criminal or short  
9 matter ahead of your next time, so you can just leave your  
10 papers where you are, and we will lock the room then.

11 MS. SUMNER: Thank you.

12 THE COURT: Thank you.

13 (Recess taken.)

14 THE COURT: Counsel, do you have any issues you need  
15 to raise or review in anticipation of the afternoon session,  
16 opening statements? Any of those matters?

17 MR. JUSTIN BAXTER: Not for plaintiff, Judge.

18 MS. SUMNER: None for defendant, your Honor.

19 THE COURT: Okay. Could I ask a couple of things  
20 that might help me simplify this first draft of jury  
21 instructions.

22 Are you anticipating any evidence will be received  
23 for a limited purpose in this case? In other words, do I need  
24 that instruction in the final packet? Or do you know yet?

25 MR. JUSTIN BAXTER: I don't expect it, Judge.

1 MS. SUMNER: Only perhaps a couple of demonstratives,  
2 which we would not be --

3 THE COURT: Well, that's not even evidence received.

4 MS. SUMNER: Right. Exactly. So then, no.

5 THE COURT: I'll take that out for now.

6 Are we anticipating any witness is going to have  
7 evidence of a felony crime --

8 MR. JUSTIN BAXTER: No, Judge.

9 THE COURT: -- conviction?

10 MS. SUMNER: Not that I'm aware of.

11 THE COURT: I'll take that out.

12 Are you going to be using hypothetical questions with  
13 your expert witnesses, or even with other witnesses?

14 MR. JUSTIN BAXTER: I don't have any hypothetical  
15 questions planned, but sometimes it comes up in testimony.

16 THE COURT: All right. I'll leave that in for now.

17 Somehow the charts and summaries standard instruction  
18 got into the pack.

19 Are you presenting charts and summaries of evidence?

20 MR. JUSTIN BAXTER: Not ones that would be offered  
21 into evidence. There is a demonstrative, but it's not that  
22 instruction.

23 MS. SUMNER: No, your Honor.

24 THE COURT: We don't need that then.

25 Okay. In the form of the first draft I gave you, the

1 order of the four claims was set out in one direction. And  
2 then from the elements set of instructions, they came up  
3 another -- in another order.

4 So when I read the order to the jury this morning, it  
5 was in an effort to being consistent with the way you had laid  
6 it out in your elements handout to me yesterday. I don't much  
7 care what order they're in, but I do want to be consistent.

8 So I wanted to check with you, Mr. Baxter, to see  
9 what order you want, if you have any particular preference.  
10 The way it's set out in the elements packet you give me  
11 yesterday, and the way I've modified the summary of the  
12 plaintiff's claims in the instruction is that No. 1 is the  
13 furnishing claim. No. 2 is the failing to follow reasonable  
14 procedures claim. No. 3 is the failing to disclose to  
15 plaintiff the contents of her credit file claim. And then  
16 fourth is the failure to conduct a reasonable reinvestigation.

17 MR. JUSTIN BAXTER: Okay.

18 THE COURT: Do you care? And if you do, what order  
19 do you want them at?

20 MR. JUSTIN BAXTER: We would suggest reasonable  
21 procedure is "e(b)" first. "i", the reinvestigation, second.  
22 "g", the failure to disclose. And then "b," the -- the -- the  
23 permissible purpose.

24 THE COURT: I'm sorry?

25 MR. JUSTIN BAXTER: The fourth one would be the "b"

1 claim.

2 THE COURT: So do you have the draft set of  
3 instructions here?

4 MR. JUSTIN BAXTER: I do. I don't have a hard copy,  
5 but I have it on my laptop.

6 THE COURT: Okay. Well, if you could pull it up.

7 I may have it in that order on the summary of the  
8 plaintiff's writings, but I don't have it in that order in the  
9 way the elements were set out because I used the order from the  
10 pack you gave me yesterday.

11 So one way or the other we need them straight. I  
12 just want -- since it's plaintiff's case, you get to pick what  
13 order you want them in. It's page 10, about, of the hard set  
14 of the first draft.

15 MR. JUSTIN BAXTER: Right. So from page 10, I think  
16 it's listed in the order I just stated.

17 THE COURT: That's the order you want them in?

18 MR. JUSTIN BAXTER: Yes, please.

19 THE COURT: Then I'm going to recast the elements,  
20 because that's not the order they're laid out in.

21 MR. JUSTIN BAXTER: Okay.

22 THE COURT: What's -- for example, on page 12, what's  
23 called the first claim is the 1681b claim, which is really your  
24 fourth claim.

25 So I'm going to move those around. Okay?

1 MR. JUSTIN BAXTER: Okay.

2 THE COURT: Are there -- do you want to take a few  
3 minutes, since we're here? Are there other constructive  
4 comments you want to give me?

5 I'll be trying to edit this, while I'm listening to  
6 your opening statements because I think I should be able to do  
7 both.

8 Any -- any -- I know there are typos and other edits,  
9 but we don't necessarily need to take time to do that now. I  
10 will give you a better set that you can do that now.

11 MS. SUMNER: Not that we haven't already raised, your  
12 Honor.

13 THE COURT: Okay.

14 MR. JUSTIN BAXTER: Just one on the -- there's a  
15 blank or --

16 THE COURT: Yes.

17 MR. JUSTIN BAXTER: The report is listed. You know,  
18 produced credit reports, namely. And the one issue there is --  
19 is it -- it -- there's about 17 different businesses that --

20 THE COURT: You know what, I'm not going to require  
21 the specification, then.

22 MR. JUSTIN BAXTER: Okay.

23 THE COURT: They're just going to have to show who  
24 they are, and point to them.

25 Okay. All right. I'll work on this.



1 But you're not giving the opening. You are, right?

2 MR. MICHAEL BAXTER: Yes.

3 THE COURT: Do you have issues?

4 MS. SUMNER: I don't.

5 THE COURT: Excellent.

6 All right. Then we can all work until the jury's

7 here, ready to go. And --

8 MS. SUMNER: Very good.

9 THE COURT: Is your setup to your satisfaction here?

10 MR. MICHAEL BAXTER: Yes, your Honor.

11 THE COURT: And, Ms. Sumner, have you seen what's on  
12 the board? You've got several boards, it looks like.

13 MR. MICHAEL BAXTER: Here's the exhibits, if you want  
14 to look at them.

15 THE COURT: You've seen all of the blowups they're  
16 going to show?

17 MS. SUMNER: You know, I don't have a problem if  
18 they're all exhibits. And we shared our demonstratives  
19 previously, so we should be in good shape.

20 THE COURT: Okay. Do you think you're going to need  
21 to move to see them?

22 MS. SUMNER: The only issue is that it does sort of  
23 block -- those boards block my view of the jurors.

24 THE COURT: If you want -- see those chairs there at  
25 the end of the jury box, if you, during opening statement, want

1 to sit there, you may.

2 MS. SUMNER: Okay. Thank you.

3 THE COURT: You could stake Mr. Perling out over  
4 here, where he could keep an eye to follow the jury, in the  
5 meantime.

6 MR. PERLING: We could have three different angles.

7 MR. EDELSON: I want an aerial view.

8 (Pause.)

9 THE COURT: The jurors are all here?

10 THE CLERK: Yes.

11 THE COURT: Well, when Ms. Sumner is back, we're  
12 ready to proceed, Mr. Perling.

13 MR. PERLING: Thank you.

14 THE COURT: Just so you know.

15 Do the jurors have room in the front of them to store  
16 these in the little spaces? (Indicating notebook.) This is  
17 awfully heavy. No? They can put it on the floor, I guess.

18 The weight of authority.

19 (Pause.)

20 MR. JUSTIN BAXTER: And, your Honor, just to confirm,  
21 our plan is to pass out the exhibit books after the opening  
22 statements.

23 THE COURT: (Nods head.)

24 I'll make a point to do that first, and then we'll  
25 have your first witness testify.

Opening Statement - By Mr. Michael Baxter

59

Who will that be? Will it be Ms. Miller first?

MR. MICHAEL BAXTER: It will be Ms. Miller.

THE COURT: Okay.

All rise for the jury, please.

(Jurors enter.)

THE COURT: All right. Thank you, everyone. Ladies and gentlemen, please be seated.

Welcome back, jurors.

As I explained this morning, the next step in this trial process will be opening statements by counsel.

Remember, this is not evidence, but it's intended for you to be a helpful preview of what each side contends the evidence may show, or at least an outline so that you know where thematically each of the witnesses might fit.

So as I told you, Ms. Miller has the burden of proof. She goes first. In this instance, Mr. Michael Baxter will give the opening statement on her behalf. So please give him your attention.

Counsel, you may proceed.

MR. MICHAEL BAXTER: Thank you, your Honor.

Your Honor, thank you. Counsel, thank you. Ladies and gentlemen.

Who is Julie Miller? Ms. Miller is a mother, a wife, a nurse, a volunteer. She has great credit. She pays all of her bills in full when they come due. She has no collections.

Opening Statement - By Mr. Michael Baxter

60

1 Equifax merged her credit file with someone who does  
2 not have great credit. The person she merged -- or Equifax  
3 merged the two files, and with someone who has a totally  
4 different Social Security number. A different birthday --  
5 month, day, and year. A different address. One of them is in  
6 Oregon, one of them is in California. And Mrs. Miller pleaded  
7 over and over and over again to correct it, and they never  
8 would.

9 You're going to find that -- the person she was mixed  
10 with had dozens of collections, and that Equifax refused to  
11 investigate Mrs. Miller's disputes.

12 They never contacted a single creditor. They never  
13 deleted a single account. They never corrected a single piece  
14 of false identifying information, after mixing her with another  
15 person. She had seven disputes over two years. Zero  
16 deletions.

17 In addition, Equifax repeatedly and habitually lied  
18 to Ms. Miller.

19 She would dispute, and they would say -- they would  
20 tell her that they had contacted all of the sources of  
21 information. That was a lie. They never contacted a single  
22 source of information.

23 They would tell her that they addressed all of her  
24 concerns, when they hadn't addressed any of her concerns.

25 They told her that they had conducted investigations,

Opening Statement - By Mr. Michael Baxter 61

1 but they would only provide the results of those investigations  
2 if she would produce acceptable pieces of identification. She  
3 repeatedly sent in identification. Equifax knew it never  
4 conducted any investigation after this merge. It knew it had  
5 no results to send her. And yet they kept telling her, over  
6 and over again, No, we've conducted an investigation. Well,  
7 you have to produce more identifying information before we can  
8 show you what the results are.

9           How did this happen? The evidence is going to show  
10 that in 2009 a collection company, Bay Area Credit, sent in an  
11 electronic form to -- to Equifax. The form showed a different  
12 person, for a different address, for -- with a -- a different  
13 Social Security number, a different date of birth. For  
14 example, the form shows the person lives in California.  
15 Ms. Miller lives in Oregon. And Bay Area is from California,  
16 this particular collection company.

17           And based on that one form from this one collection  
18 agency, with information that didn't match, Equifax took this  
19 other -- this other person and mixed both files together, so  
20 that Mrs. Miller would receive a file not only with her  
21 information but with this other person's information.

22           Equifax placed 37 additional collections on her  
23 credit report in addition to Bay Area Credit. Bay Area says it  
24 is one form. They put it on a total of 38 collections on  
25 Ms. Miller, who had perfect credit.

Opening Statement - By Mr. Michael Baxter 62

1 Then Equifax would send this credit report to  
2 Ms. Miller's businesses that she deals with day-to-day in her  
3 community.

4 They would send it to the businesses she didn't deal  
5 with for the other creditor, telling her -- telling these  
6 creditors that Mrs. Miller does not pay her bills.

7 And repeatedly, over and over again, she would  
8 contact Equifax, and they would not -- dispute it again and  
9 again. Seven times, after the merge, she disputed. Seven  
10 disputes. She called. She wrote.

11 There was not a single investigation, not a single  
12 creditor contacted, not a single account deleted, not a single  
13 piece of identifying information corrected.

14 So how did she learn about all of this?

15 Well, it began, she applied for a joint credit line  
16 with her son at the bank she normally deals with in Hubbard,  
17 Oregon. And she received, first at the bank and then in the  
18 mail, the following denial. (Exhibit displaying.)

19 And, incidentally, you'll all be getting exhibit  
20 books. Don't expect -- you don't need to read through the  
21 whole document. This is just for demonstrative purposes. You  
22 will be getting the exhibit books shortly, just to point out.

23 But on this, this is for a credit line at KeyBank  
24 with her son. It shows she was denied the credit line. Why?  
25 Because of an Equifax credit report. It shows that she has

Opening Statement - By Mr. Michael Baxter 63

1 recent delinquencies, excessive delinquencies. And what does  
2 she do when she got this? She immediately wrote to Equifax to  
3 get her credit report.

4 And Equifax responded. They sent her a January 5,  
5 2010, letter. What does it say? It says, we can't send your  
6 credit report until you send acceptable identification.

7 So what does she do? She immediately puts together  
8 and sends identification showing her Social Security number and  
9 her telephone bill.

10 And the Social Security number she truncates. It  
11 only shows the last four digits, because she's concerned about  
12 her privacy.

13 This was sufficient for Equifax to send her a January  
14 18th, 2010 credit report. And keep in mind, this is with a  
15 truncated Social Security number that they send this  
16 information. This was the credit report that she gets now.  
17 (Document displaying.) This is the credit report of Julie  
18 Miller. None of these collections belong to Julie Miller.  
19 She's been mixed with another Julie Miller. This credit report  
20 includes all of her accounts and all of the other person's  
21 accounts on it. It includes both people's identifying  
22 information. It includes 38 false collection and derogatory  
23 accounts, combined with her own accounts.

24 And, obviously, this is a person who takes pride in  
25 her credit. And she, you know, is extremely upset when she

Opening Statement - By Mr. Michael Baxter

64

1 gets this.

2 What does she do? She immediately disputes to  
3 Equifax. She sends a dispute, January 25, 2010. Excuse me.  
4 Can you put those other collections up, just so they can see --  
5 here's page 2 of that credit report. None of these belong to  
6 her.

7 Would you put page 3 up.

8 None of these collections belong to her.

9 Okay. Now, in her first dispute, on January 25,  
10 2010, what she sends, certified mail, so she knows that they  
11 receive -- received it, what does she say in her dispute?

12 And, again, you don't have to read this. But, in  
13 essence, she says, I've been mixed with someone else. My  
14 identity might be stolen. I have pages of collections and  
15 derogatory accounts on my credit report.

16 Then she took the credit report, took a yellow  
17 highlighter, and highlighted all of the false information on  
18 it, and included that with her dispute that she sent to  
19 Equifax, certified mail.

20 What was Equifax's response? First, there was no --  
21 no accounts deleted. There is no identifying information  
22 corrected. But she received a February 5th, 2010, response  
23 from Equifax.

24 This is the response she received. First, right  
25 here, it says, We -- we've received your request concerning



Opening Statement - By Mr. Michael Baxter 65

1 your Equifax credit report -- credit file, and have addressed  
2 your concerns.

3 They -- she just got this credit report. It didn't  
4 address any of her concerns.

5 It also says, In order to receive the results of your  
6 investigation -- they knew they hadn't done an investigation.  
7 But they told her, if you want to see the results, we'll give  
8 them to you if you can provide us with acceptable pieces of  
9 identifying information. And what do they say?

10 It has to be -- we had two categories here.

11 It has to be -- the identifying information has to be  
12 acceptable from Category 1, and acceptable from Category 2  
13 before they'll send you the results; which there had been no  
14 results in this investigation.

15 Equifax will testify -- testify that the credit  
16 report -- her submitting the credit report highlighted, alone,  
17 was sufficient identification for them to conduct an  
18 investigation. That will be Equifax's testimony.

19 Then she made her second dispute, on February 11th,  
20 2010. What does she say, in this dispute letter? I'm  
21 concerned my identity's been stolen. I'm concerned of identity  
22 theft. I've been mixed with another person. Would you  
23 please -- she pleads with them, get this other person's  
24 private -- get this information and also their private  
25 identifying information off of my credit report.

Opening Statement - By Mr. Michael Baxter 66

1 She tells Equifax how to fix the report. She tells  
2 them, Remove all of the collections. They don't belong to me.  
3 She includes their February 6 response, that you just saw, that  
4 says, Just send in identifying information, and we'll send you  
5 the results of the investigation. She includes a copy of her  
6 Oregon driver's license. She includes a copy of her pay stub,  
7 with a current address, with her Social Security number, with  
8 her dispute; that she sends to Equifax.

9 On -- she receives Equifax's response, dated February  
10 23, 2010. And this is the results of an investigation. So  
11 immediately she's happy. Oh, there's been an investigation.  
12 Here are the results of the investigation.

13 What are -- what does this say? Right at the top  
14 here: Equifax contacted each source directly and our  
15 investigation is now completed. Well, that was a complete lie.  
16 They didn't contact any source, period.

17 Next, they say, Be specific about the nature of your  
18 dispute.

19 Well, she just sent in a complete credit report,  
20 highlighted with all of the false information. How could she  
21 be more specific than that?

22 Instead of fixing Ms. Miller's credit report, which  
23 Equifax had merged, they also told her she needs to contact  
24 credit grantors herself. We're not going to do it, but you can  
25 contact the credit grantors and get this straightened out.

Opening Statement - By Mr. Michael Baxter

67

1           There's no investigation of Mrs. Miller's dispute.  
2           There's not a single deletion as a result of the investigation.  
3           There was no false identifying information corrected.

4           Then she received Equifax's February -- or let me  
5           show you Equifax's February 23, 2010, credit report she  
6           received with these results. No changes. She gets the -- the  
7           response to their investigation. It's -- the -- exactly the  
8           same as what she said in her dispute.

9           This is -- they -- they sent this to her with a  
10          redacted Social Security number and an Oregon driver's license.  
11          Again, it shows dozens of false collections that don't belong  
12          to her.

13          The report also shows that these false collections  
14          have been provided to the businesses that Mrs. Miller does  
15          business with on a daily basis in her small community that she  
16          lives in. Equifax did not investigate a single disputed  
17          account. Equifax did not contact a single creditor. And yet  
18          they tell her the investigation has been completed, and  
19          here's -- and we have contacted all of the sources of the  
20          investigation.

21          Then, in March of 2010, she requests an increase in  
22          her checking account credit line at her local bank. And here's  
23          what she receives from KeyBank, her local bank.

24          Again, she's denied credit based on an Equifax credit  
25          information because of collection actions. She has no

Opening Statement - By Mr. Michael Baxter 68

1 collection actions. The only collection actions that are there  
2 are ones that Equifax put on her credit report.

3 On February 8, 2011, she requests her credit report.  
4 What does Equifax do? Equifax ignores it. They don't do  
5 anything. They won't send her her credit report. Then on  
6 March 21, 2011, she requests her credit report again. She  
7 sends the ID. She sends it via certified mail.

8 And on -- she receives Equifax's March 30, 2011,  
9 response to this second request. What does that response say?  
10 We'll send you a credit report if you send acceptable  
11 identifying information to us. Then we'll give you a copy of  
12 your credit report. But we're not going to send it to you.

13 She then makes an April 5th, 2011, third request for  
14 a credit report. She provides her insurance bill, with a  
15 complete address. Her W-2 form, with a full, unredacted Social  
16 Security number. She sends it certified mail.

17 And on April 21, she receives Equifax's April 13th,  
18 2011, response: We're not going to send you a credit report  
19 until you provide us with acceptable information from column 1  
20 and column 2.

21 They will admit the information she sent was  
22 acceptable. But they told her it was unacceptable, and refused  
23 to send her a credit report.

24 She then writes them again, on April 27th, 2011.  
25 This is her fourth request to try and get a credit report from

Opening Statement - By Mr. Michael Baxter 69

1 Equifax. She submits her identifying information. She submits  
2 an insurance bill with her current address, a W-2 form with a  
3 full, unredacted Social Security number. She sends it  
4 certified mail.

5 Equifax ignores that request.

6 Now, she's requested her credit report on February  
7 8th, March 21st, April 5th, April 27th, never received a credit  
8 report.

9 THE COURT: She calls Equifax, to plead with them to  
10 give her a credit report on June 28th. And she tells them,  
11 Could I please get a copy of my credit report? And the  
12 operator on Equifax's phone line makes her provide her full  
13 Social Security number, her date of birth, her current address,  
14 her mortgage information, all of her credit card information  
15 account. Over the phone, she gives all of this information.

16 Then the operator says, Uh, I need to talk to my  
17 supervisor. I'll get right back to you.

18 They put her on hold for seven minutes. They come  
19 back on the line. And the operator asks the same questions  
20 again. Will you please give me your Social Security number,  
21 your date of birth, your current address, the mortgage, the  
22 credit card information. And then tells her, Well, we think  
23 you've been mixed with someone else. You need to contact the  
24 credit grantors and update your Social Security number.

25 And how do we know that for sure? Let me show you

Opening Statement - By Mr. Michael Baxter

70

1 Equifax's record. This is Equifax's record of that telephone  
2 conversation. And right up here it reads: Advise the consumer  
3 needs to contact the credit grantors to update Social Security  
4 number. So they told her, You fix it. You have the problem.  
5 You fix it. There's no offer to assist, to try to get this  
6 information off of her credit report. She's told to contact  
7 the creditors.

8 And think about that. She has a different Social  
9 Security number than what these creditors have on file. And  
10 she -- Equifax is telling her she has to go back to the credit  
11 grantors and make them somehow correct Equifax's mix -- mix of  
12 this information on her credit report, when she's not even  
13 their -- their debtor, not even the person on file.

14 She's frustrated. She asks for a credit report, to  
15 see what to dispute. Equifax initially refuses to provide her  
16 a credit report, even though they know she's been mixed with  
17 somebody else.

18 Finally, without providing any documents, they do  
19 send her another credit report. Equifax caused her to be  
20 mixed. They knew she was mixed, but they refused to fix that  
21 she was mixed.

22 There was no investigation of her January -- June 28  
23 telephone call. Not a single deletion. No false information  
24 was corrected. Equifax continued to send false and deveining  
25 [sic] credit reports to the businesses she deals with every day

Opening Statement - By Mr. Michael Baxter

71

1 in her life, in her community.

2 The information now, she learns, is also going to the  
3 other person's creditors. So all of her private, confidential  
4 information is also going to the other person's creditors as  
5 well.

6 She doesn't know if this other person has her  
7 information and -- and potentially could steal her identity.  
8 She is in fear of that. So she makes a fourth dispute.

9 On July 18th, 2011, she disputes again to Equifax.

10 Again, in this dispute, she explains how frustrated  
11 she is. How the credit report still includes both hers and  
12 this other person's accounts.

13 She questions, why am I getting this other person's  
14 personal financial information? She's concerned for the safety  
15 of her own private information. She, again, sends a copy of a  
16 highlighted credit report, with all of the false information  
17 highlighted.

18 But, in addition, she used a form that Equifax  
19 provides on the back of the credit report. It's called a  
20 research request form. And she fills that out, and includes  
21 her Social Security number, her date of birth. She crosses out  
22 all of the false information that they have on there. She  
23 puts -- points out what addresses are not hers. They ask her  
24 for her personal cell phone number.

25 She thinks -- she doesn't want to give it because she

Opening Statement - By Mr. Michael Baxter

72

1 doesn't like giving our her cell phone number. But she says if  
2 this will help, I'll even give them my personal cell phone  
3 number. So she does.

4 They never contact her.

5 Here's their response. She receives a July 28, 2011,  
6 response from Equifax:

7 We've addressed your concerns.

8 They haven't addressed any of her concerns.

9 Second, if you want to get the results of our  
10 investigation, you have to provide acceptable  
11 identifying information, from both of these  
12 columns.

13 And they don't conduct any investigation, not a  
14 single account is deleted. No false identifying information is  
15 corrected.

16 What does she do? Do you believe -- she disputes  
17 again, a fifth time. She disputes again to Equifax, on  
18 August -- her August 1, 2011, dispute. First, following  
19 Equifax's instructions, she submits the research request form  
20 with her dispute to receive the results of the investigation  
21 that they say they've already done.

22 She tells Equifax in this -- that this is her  
23 dispute. That here's a copy of her insurance bill, with her  
24 current address. Here's a copy of her W-2 form, with her full  
25 Social Security number.



Opening Statement - By Mr. Michael Baxter

73

1 She had already provided a completely highlighted  
2 credit report, with all of the false information on it. They  
3 know it's her current address. The return address on her  
4 envelope is the same as the bills that she's sending in. So  
5 Equifax responds.

6 And there's no investigation. But what they do is  
7 they send her her August 8th, 2011, credit report.

8 Here's her credit report.

9 Now, since she's been mixed, they send her four  
10 credit reports. They haven't deleted any account that she's  
11 disputed. The collections and false information remain.  
12 There's been no investigations. There's been no creditors  
13 contacted. There's been no deletions as a result of a single  
14 investigation. There's been zero false identifying information  
15 corrected. There are pages and pages of collections still on  
16 her credit report, going to all of the businesses she deals  
17 with on a daily basis, in her community. And it's still going  
18 to the other person's businesses and -- as well as to her, her  
19 own businesses.

20 So she disputes again. She disputes on August 25th,  
21 2011.

22 What does she say in this dispute? First, she  
23 disputes the identifying information. She tells them how upset  
24 she is about the identify -- the ID theft -- the potential of  
25 ID theft to her. She uses Equifax's research request form.

Opening Statement - By Mr. Michael Baxter

74

1 She hand -- she literally goes through and hand-writes each of  
2 these accounts on a research request form. And you can see  
3 here, this is a research request form.

4 She -- this is -- she used multiple pages. And she  
5 goes through and hand-writes all of these collections, with the  
6 accounts. She circles the Social Security numbers, telling  
7 them "incorrect." She crosses out the false addresses. She --  
8 and in her dispute, she tells them she's upset about identity  
9 theft.

10 She sends it with this research request form, which  
11 Equifax says, you -- they would like, if they're going to do a  
12 dispute. They again request she send a cell phone number. So  
13 she sends her cell phone number again. Of course, she's never  
14 contacted.

15 She preemptively submits identifying information, a  
16 W-2 form with her full Social Security number, insurance bill,  
17 with her current home address. What's Equifax's response to  
18 this sixth dispute?

19 On September 1, 2011, they respond again.

20 Once again: We've addressed your concerns.

21 This is her sixth dispute, and they haven't addressed  
22 any of her concerns.

23 To receive the results of the investigation, we  
24 need acceptable identifying information.

25 Well, she sent in copies of the credit report. She

Opening Statement - By Mr. Michael Baxter

75

1 sent in all of her identifying information. And there --  
2 there's never -- they'll testify that there never was an  
3 investigation in any of these instances.

4 They warn her, down here, that the F.B.I. has named  
5 identity theft as the fastest-growing crime in America. This  
6 just heightens her fear of what it's like having this  
7 information out in the public sphere, being provided to people  
8 that she has not given the authorization to receive it.  
9 There's no investigation. There's not a single account that's  
10 deleted. No corrections of the false identifying information  
11 that they knew -- they knew it belonged -- that she -- had  
12 mixed her with another person. But it didn't make any  
13 difference. There are no corrections.

14 What did she do again? You won't believe. She  
15 disputes again. She sends in a seventh dispute to Equifax, and  
16 she sends a copy of Equifax, September 1, 2011, response. And  
17 she sends, again, her identification, with her full Social  
18 Security number. And she receives Equifax's response, the  
19 September 21, 2011, response letter.

20 Once again: We've addressed -- no results. No  
21 investigation. Not a single account deleted. Not a single  
22 piece of false identifying information corrected, despite  
23 knowing that she's mixed. But she gets this response, which  
24 again says, We've addressed your concerns.

25 Another lie.

Opening Statement - By Mr. Michael Baxter

76

1 Again, to receive the results of -- of the  
2 investigation -- when they knew there had never been any  
3 investigation -- but we're not going to send you these results  
4 unless you send in some kind of identification that's going to  
5 be acceptable to us. And after seven disputes, two years, zero  
6 investigations, after being mixed with this other person, she  
7 gave up.

8 Now, you're also going to hear evidence that in --  
9 now, this began in, I think, September of 2009 that she was  
10 mixed with these other people.

11 You're going to hear in 2008 she learned that she had  
12 been -- had accounts from another person on her TransUnion and  
13 Experian credit report in 2008. She -- and she disputed the  
14 TransUnion and Experian.

15 And what did they do? They conducted investigations.  
16 They went to the -- the creditors. They deleted all of the  
17 false information.

18 Now, you'll learn that a credit grantor incorrectly  
19 had -- made a public record lien that was not deleted. And so  
20 in September of 2009, after -- or September of 2010, after the  
21 point that Equifax became involved in this case, she was denied  
22 credit based upon an Experian credit report, based on that  
23 public record lien.

24 Now, you're also going to hear in this case that they  
25 did correct it. Well, they did correct her credit report.

Opening Statement - By Mr. Michael Baxter

77

1 Four months after filing the case, they gave her a corrected  
2 credit report. They took off all of the collections. And they  
3 corrected the credit report, just as she asked them to do, and  
4 told them how to do it in her first dispute. After we sued,  
5 four months into this case.

6 And the evidence is going to show that Equifax  
7 committed serial violations of the Fair Credit Reporting Act.  
8 They blew away the four requirements to the Fair Credit  
9 Reporting Act. They complied with none. Their requirements  
10 that they must always follow, they never followed with  
11 Ms. Miller.

12 What are those four elements? You've heard them from  
13 the judge. But, basically, the first one, 1681i, is that each  
14 time a consumer disputes the accuracy of their credit report,  
15 Equifax shall investigate. Shall investigate.

16 They never conducted a single investigation. Seven  
17 disputes. No investigations.

18 If an investigation finds information which is  
19 inaccurate or cannot be verified, Equifax is required to modify  
20 or delete it. Required to modify or delete it.

21 Equifax never modified or deleted any information as  
22 a result of any investigation.

23 They also violated 1681e(b). Equifax is required to  
24 follow reasonable procedures to ensure the maximum possible  
25 accuracy of Mrs. Miller's personal credit report. Not

Opening Statement - By Mr. Michael Baxter

78

1 everybody's credit report. They have to follow the procedures  
2 for the maximum possible accuracy for Julie Miller, the  
3 plaintiff's credit report.

4 Equifax put 38 derogatory false accounts on her  
5 credit report. And for almost two and a half years, refused to  
6 delete them.

7 They also violated 1681g. Equifax shall, upon  
8 request, disclose to the consumer their complete credit file.  
9 Equifax refused to provide Mr. -- Mrs. Miller her credit report  
10 four times in 2011, and only provided reluctantly, in June,  
11 when -- when she insisted on it -- receiving it, after a  
12 telephone call.

13 Finally, they failed -- we allege they failed to  
14 comply with Section 1681b. And that says, The consumer  
15 reporting agency may only furnish the consumer report to a  
16 company who intends to use the report for a credit transaction  
17 involving the consumer.

18 Equifax furnished Ms. Miller's credit report to  
19 companies it knew had no right to receive it. Equifax knew  
20 both consumers had been mixed on their credit file. Creditors  
21 all over the country received plaintiff's credit reports,  
22 saying Mrs. Miller does not pay her bills.

23 Who are the witnesses we're going to call in this  
24 case? We're going to call Julie Miller, and she's going to  
25 tell you her story, on the stand.

Opening Statement - By Mr. Michael Baxter

79

1           We're going to call Rick Miller, her husband. And  
2 he's going to tell you about what -- what -- what it was like  
3 going through this ordeal with Mrs. Miller, and what was the  
4 impact on her, and the frustration, fear, and distress that he  
5 observed in her.

6           We're going to call Sheryl Bauer. Ms. Miller grew up  
7 with Ms. Bauer. She spoke regularly with Ms. Bauer. And she's  
8 going to testify to the changes she observed in her during this  
9 period of time.

10           We're going to call Karen Fox. Ms. Fox is also a  
11 nurse. She's a long-time friend. And she's going to testify  
12 to the changes she observed in her going through this ordeal.

13           And, finally, we're going to call Monica Evanson, her  
14 hairdresser. And Ms. Evanson is going to testify the changes  
15 she observed from the stress in dealing with the credit  
16 reporting agencies.

17           We're also going to call Evan Hendricks. Evan  
18 Hendricks, a national expert in credit reporting issues. He  
19 was involved in the formation of the Fair Credit Reporting Act.  
20 He knows the importance of the law, and how the law works.

21           He's going to testify that Equifax has known, since a  
22 19 -- 1994 consent decree, about the problems that Equifax was  
23 having with mixed -- mixing consumers' credit files. He's  
24 going to talk about the refusal to fix those problems, and  
25 their inadequate investigation procedures.

## Opening Statement - By Ms. Sumner

80

1 Basically, Equifax mixed Mrs. Miller with a different  
2 person, with a different Social Security number, with a  
3 different date of birth, with a different address.

4 Mrs. Miller asked Equifax to correct her credit  
5 report again and again and again.

6 Equifax wouldn't investigate a single one of her  
7 disputes a single time. And, finally, Equifax lied when it  
8 said it had contacted the sources directly and said it had  
9 provided -- if she only provided acceptable ID, it would give  
10 her the results of the investigation, when it knew there had  
11 never been an investigation.

12 That's the case that plaintiff is going to be  
13 presenting to you today.

14 Thank you.

15 THE COURT: Thank you, Mr. Baxter. Thank you.

16 So would you clear your poster boards, please.

17 And now, jurors, let's turn our attention, please, to  
18 Ms. Sumner, on behalf of the defendant.

19 You may proceed, Counsel.

20 MS. SUMNER: Thank you, your Honor, Counsel, members  
21 of the jury.

22 I know we were already introduced to you earlier, but  
23 I would like to do it again. If you're like me, sometimes it's  
24 hard to keep track of who is who.

25 I think the labels probably help a little bit. But



## Opening Statement - By Ms. Sumner

81

1 I'm Phyllis Sumner, counsel for Equifax. My colleagues who are  
2 here today, on behalf of Equifax, are Mr. Edelson and Perling,  
3 who are seated at counsel table. And then we already  
4 introduced to you earlier to Margaret Leslie, who is our  
5 corporate representative. She is VP of technology for Equifax.

6 Now, you may be surprised to hear me say that there  
7 are a few things that Mr. Baxter said that we agree with. Of  
8 course, we don't agree with them all. That's why we're here.  
9 And there are always two sides to a story.

10 You got to hear Ms. Miller's side of the story, and  
11 now this is our opportunity to preview for you our side of the  
12 story.

13 As the Court said, what we're saying is not the  
14 evidence. The evidence will need to be proven by Ms. Miller  
15 and her counsel, but I hope to forecast to you what Equifax  
16 will show, when our witnesses are on the stand.

17 But before we do that, let me just go ahead and tell  
18 you a few things with which we agree.

19 First, Equifax agrees that it does have grave  
20 responsibilities concerning the FCRA and concerning the  
21 millions -- and it is millions -- of credit histories that it  
22 maintains in order to assist the credit system.

23 Equifax also acknowledges it's not infallible. And  
24 as the evidence will show, Equifax has gone to great lengths to  
25 put into place numerous policies and procedures to protect the

## Opening Statement - By Ms. Sumner

82

1 rights of the consumers such as Mrs. Miller. In fact Equifax  
2 has hundreds of pages of policies that -- and procedures, which  
3 it must, in order to manage the vast amount of information that  
4 it handles on behalf of consumers and businesses.

5 And during the trial, Equifax will show you many of  
6 those procedures, and show you how it continuously updates and  
7 evaluates its procedures in order to deal with unusual  
8 circumstances and the ever-increasing sophistication of this  
9 industry.

10 And Equifax representatives will also testify how  
11 Equifax learns when mistakes happen, and how it trains its  
12 agents to avoid repeating those mistakes.

13 Now, second, Equifax acknowledges that its  
14 sophisticated matching algorithm did merge Mrs. Miller's file  
15 with another, Julie M. Miller, who resides in the Portland area  
16 and has a seven-for-nine social security match, and is almost  
17 the same age.

18 And, third, we agree that Ms. Miller contacted  
19 Equifax on numerous occasions to discuss what she discovered on  
20 her credit disclosure.

21 Finally, we agree, and you'll hear Equifax witness  
22 DeeDe Mixon acknowledge -- and she has already acknowledged in  
23 a prior deposition -- that the Equifax agents made errors in  
24 responding to Ms. Miller's disputes.

25 And, in fact, that the agents didn't always follow

## Opening Statement - By Ms. Sumner

83

1 the procedures that were outlined for them.

2 So if we agree on those points, then why are we here?  
3 And it really boils down to the mistakes that the Equifax  
4 agents made in handling Ms. Miller's credit file rise to the  
5 level of violations of the Fair Credit Reporting Act. And that  
6 is what you'll be asked to consider. And Mr. Baxter has talked  
7 with you a little bit about what those requirements are, but he  
8 has not spoken with you about each elements of those offenses  
9 and what is required to be proven.

10 And, of course, that's the Court's job, and you will  
11 hear from the Court with respect to that. But keep in mind  
12 that there are very specific elements that must be shown in  
13 order to prove a violation.

14 Equifax believes that it did not negligently violate  
15 the FCRA and that it certainly did not willfully violate  
16 Ms. Miller's rights.

17 This case is not about fixing Ms. Miller's file. You  
18 will hear evidence -- and you already heard Mr. Baxter  
19 acknowledge -- that Equifax has fixed her file.

20 We are here because Ms. Miller is asking you to award  
21 her with monetary damages. And she doesn't have what would be  
22 considered economic damages; in other words, financial losses.  
23 She's asking you to award her with emotional distress damages.

24 And in addition, she is asking you to find that  
25 Equifax' conduct was so reprehensible in this circumstance that

## Opening Statement - By Ms. Sumner

84

1 you should punish Equifax and award her punitive damages.

2 That, ladies and gentlemen, is the crux of our  
3 disagreement and why we're here today.

4 So I would like to talk with you a little bit -- now  
5 that we've put those important issues on the table, I would  
6 like to back up a little bit and try to put this in context.

7 You've already heard Mr. Baxter refer to Equifax over  
8 and over again in his opening argument. And I'll have to say,  
9 he didn't -- he didn't provide a very pretty picture of Equifax  
10 in these circumstances.

11 And it's difficult for us to sit and listen to this  
12 commentary. And what I would like to do now is to put it in  
13 context, so you can understand who Equifax is and what it is  
14 about and what it tries to do in order to respect the rights of  
15 the consumers.

16 And, of course, Equifax is made up of people, and  
17 people sometimes make mistakes, as the agents did in this  
18 circumstance.

19 We're not making an excuse by saying that. That's  
20 reality. When we have people that make up companies, sometimes  
21 that happens.

22 And during this trial, you'll have the opportunity to  
23 hear from some people who have had many years with Equifax.  
24 And, again, to help put this in context, so you'll understand  
25 what Equifax has done and continues to do.

## Opening Statement - By Ms. Sumner

85

1           Let me give you a little bit of background on  
2       Equifax. It is one of the country's three major credit  
3       reporting agencies. You've already heard that the other two  
4       are TransUnion and Experian. Equifax is headquartered in  
5       Atlanta, Georgia, which you may guess, from my accent, that's  
6       where I'm from. And it's been in business for over a hundred  
7       years. So it's actually withstood a lot of growth and many,  
8       many changes over this year as our economy has grown, as our  
9       credit reporting industry has expanded, and continued to become  
10      more and more sophisticated.

11           It has over 7,000 employees, and it compiles data  
12      from over 65,000 sources and completes nearly 1.5 billion  
13      updates on a monthly basis. 1.5 billion on a monthly basis.  
14      That's a lot of data that comes into Equifax. And it handles  
15      more than 200 billion data updates on an annual basis.

16           And Equifax manages that colossal amount of data and  
17      does focus on how it handles consumer information. In fact  
18      Equifax, you will hear, was the first consumer reporting agency  
19      to establish a national consumer service center with a  
20      toll-free access to allow consumers to be able to contact  
21      Equifax.

22           And we have folks who stay at Equifax for many years  
23      because of what the company stand -- stands for, including the  
24      two employees who will testify live for you at trial. And I  
25      want to talk with you a little bit about those individuals.

1           Now, to help you understand Equifax's role as a  
2 credit reporting agency, you'll hear from Margaret Leslie, who  
3 you've already met. And she has worked for the company for  
4 over 23 years. And she's managed five key Equifax core systems  
5 in technology: Consumer data acquisition and credit reporting,  
6 consumer disclosure and dispute, skip trace technology,  
7 mortgage technology, and commercial technology groups.

8           And she will explain the intricate process of credit  
9 reporting, and how Equifax's system works to manage that -- the  
10 billions of data points that come in, and who manage data of  
11 over 250 million consumers.

12           So I know it's a lot of numbers that I'm throwing at  
13 you, but it's important to understand in context the volume of  
14 information that Equifax manages on a daily basis. 250 million  
15 consumers is, of course, a lot of folks.

16           Now, Ms. Leslie will explain that as a credit  
17 reporting agency, Equifax maintains that information, and that  
18 it's reported to Equifax by furnishers of information. And  
19 that when it receives that 1.5 billion amount of information on  
20 a monthly basis, that that information has to be processed.  
21 And she'll testify and explain to you a very sophisticated  
22 system and computer programming that Equifax has used, an  
23 algorithm to manage the massive data. And that it has to match  
24 information to over 250 million consumers.

25           So when a lender sends in an update, for example, on

## Opening Statement - By Ms. Sumner

87

1 a Rebecca Jones, that Rebecca Jones might be Rebecca Jones in  
2 the application. She might be Becca Jones in the application.  
3 She might use a middle initial in one application. She might  
4 get married and use a new name.

5 And Ms. Leslie will explain how creditors, when they  
6 send in information -- sometimes they transpose numbers.  
7 Social Security numbers may not match exactly, but it may  
8 relate to the exact same consumer. And she will explain that  
9 applications are often handwritten and difficult for the  
10 creditors to understand. So when the updates come in, there  
11 might be a slight variation on an address number. And  
12 sometimes creditors and consumers make their own mistakes.  
13 Sometimes consumers transpose numbers when they send in  
14 information. They're all people, too.

15 So Ms. Leslie will explain how the computer system  
16 works in a very sophisticated way in order to match these  
17 consumers, because it will not always be that a consumer's  
18 information will come in the same way.

19 And yet Equifax's job is to match all of that  
20 information on one consumer into one file.

21 And Ms. Leslie will talk with you about how critical  
22 that matching process is for our system to work, so that  
23 individuals don't have multiple files. So that when a creditor  
24 requests information on an individual, then they don't get a  
25 piece of a file because that individual's information has not

1     been merged into one file.

2             The matching of the information and the merging of  
3     files is critical for this process to work appropriately. They  
4     must be able to match those files.

5             So if Rebecca Jones marries Bobby Smith and becomes  
6     Becky Smith, the system needs to identify her now as being the  
7     same person that she used to be, when her name was Rebecca  
8     Smith [sic]; not that she would have changed as a person, but  
9     her name would have changed.

10            Now, to accomplish this challenging task, this is not  
11     something that's managed by individuals. And you can imagine  
12     with the millions of amounts of data coming in and the -- the  
13     task of trying to get the right data to the right individuals,  
14     that has to be something that is computerized. And so Equifax  
15     has developed a sophisticated matching algorithm, and it's a  
16     logic system that figures out what to do when a piece of  
17     information comes in.

18            And you can see from the slide in front of you, this  
19     gives you a little bit of a forecast. And I'm not going to  
20     spend a long time on this. This is not my forte. I'm not  
21     someone who can go through the details of this.

22            But, fortunately, Ms. Leslie can, because she's been  
23     in this technology business for a very long time. And she will  
24     talk with you about the 13 matching elements, which compares to  
25     match information to consumers. And she'll explain that the 13



## Opening Statement - By Ms. Sumner

89

1 elements are those listed on the chart, which is last name,  
2 middle name, first name, suffix, gender, street number, street  
3 name, city, state, zip, Social Security number equal, Social  
4 Security number maybe -- because as I mentioned, sometimes they  
5 may be slightly off, but it still relates to the same person --  
6 age, date of birth, and account numbers.

7 So she will explain to you, then, that if data about  
8 a Bobby Smith comes into the system, then that matching logic  
9 goes through the process to figure out, out of the whatever  
10 number -- thousands and thousands of Bobby Smiths, which one it  
11 is.

12 And she will walk you through that whole process and  
13 how that works, and she'll explain that there's something like  
14 8,000 possible combinations of those 13 elements.

15 And she'll explain how that works when the data comes  
16 into the system, how it matches up. And when someone requests  
17 a report, how the system works to identify the report that they  
18 are requesting.

19 And she'll address how it brings in candidate files  
20 and then returns a file in response to the request. And she'll  
21 talk with you about the combining of multiple files and  
22 specifically what happened in this case, because Mr. Baxter  
23 didn't really go into detail about how that happened in this  
24 particular case.

25 And she'll talk with you about that because of the

## Opening Statement - By Ms. Sumner

90

1 very close identification information of these two Julie M.  
2 Miller's, who reside very close together.

3 Now, you'll also hear from DeeDe Mixon, and she will  
4 explain the consumer dispute process and how agents respond  
5 when they receive a consumer contact.

6 And she's been with Equifax for 22 years and has held  
7 a lot of different positions in consumer services. She's  
8 currently a consumer service manager. But she's held positions  
9 such as disclosure processing agent, verification agent,  
10 dispute agent, maintenance reviewer, quality analyst, trainer  
11 and supervisor in the dispute department, and vendor manager.

12 Now, Ms. Mixon did not personally make the mistakes  
13 in this case, but she feels the most responsible for them,  
14 because she's in charge of the training department. She works  
15 with the agents. She tries to identify potential issues that  
16 may arise. And she trains agents to address them.

17 And she'll explain to you about the different  
18 functions in that department, and walk you through the dispute  
19 process.

20 And she'll discuss the policies and procedures that  
21 Equifax has in place so that when a consumer makes a dispute,  
22 they can handle it efficiently, which is important, and  
23 appropriately. And how those agents are trained. And she'll  
24 discuss what happened in this case, in terms of the contacts  
25 for Ms. Miller and what the records reflect, because she's very

## Opening Statement - By Ms. Sumner

91

1 familiar with the Equifax records and the form letters, that  
2 you have seen some of those today.

3 Now, we're not going to ask her to walk you through  
4 every single document in this case, but we are going to ask her  
5 to summarize for you the evidence. And she will point out to  
6 you what things the agents did wrong and what things the agents  
7 did right when they were handling this dispute.

8 They didn't do everything wrong. They did follow  
9 some policies and procedures. But they did not follow all of  
10 them. And we have acknowledged that in prior depositions, and  
11 we will continue to acknowledge that to you here today.

12 She's also going to talk with you about how they've  
13 addressed this, to try to keep this unusual circumstance from  
14 happening again.

15 Now, another witness that you will hear from is Anne  
16 Fortney, and she is a credit reporting industry expert.

17 She is a partner at the law firm of Hudson Cook, in  
18 Washington, D.C. And she has 35 years of experience  
19 interpreting federal and state consumer protection laws and of  
20 the consumer financial services industry. She's also a former  
21 associate director for the credit practices bureau for consumer  
22 protection of the Federal Trade Commission, which we often  
23 refer to as the FTC. And she'll talk about the Fair Credit  
24 Reporting Act, because it's not an easy statute. There are  
25 many components of it. Yes, there are many requirements. But

## Opening Statement - By Ms. Sumner

92

1 it is not quite as simple as summarized by Mr. Baxter. And  
2 she's going to provide you some expertise with respect to that.

3 She's going to explain the purpose of the Fair Credit  
4 Reporting Act, which was enacted to provoke -- promote the  
5 efficiency of the banking system while ensuring fairness,  
6 impartiality, and respect for a consumer's right of privacy.

7 But she will also explain that it requires balancing  
8 of interests and obligations of several different groups, not  
9 just the credit reporting agencies.

10 She'll also explain that there is -- there is no  
11 perfect information requirement. It would be impossible, with  
12 the amount of data that is managed, for there to be perfection.  
13 And the FCRA does not require that. It requires the CRAs to  
14 follow reasonable procedures. And those reasonable procedures,  
15 she will explain, must be determined in context.

16 And Equifax agrees that it has obligations under the  
17 FCRA. But you will see evidence presented to you that it  
18 maintains and follows reasonable procedures. They're not  
19 perfect procedures and they're not infallible procedures, but  
20 they are reasonable. And Equifax has gone to great lengths in  
21 order to develop and implement those procedures.

22 Ms. Fortney will also talk to you about the role of  
23 credit reports in our economy, because there is an important  
24 role. And our country depends on the balancing of interests  
25 and the sharing of information and the quick sharing of

1 information. I think all of us are familiar with how credit  
2 seems to be so instantaneous at this point. People can stand  
3 in line to check out at Macy's and be offered a credit card,  
4 and the expectation is that you will get a response on the  
5 spot.

6 To be that efficient and that quick, then steps have  
7 to be taken to process information at a very, very high speed.  
8 So lenders, such as banks and credit card companies, they rely  
9 on credit reporting agencies to receive information about  
10 consumers so they can decide whether to extend credit.  
11 Consumers rely on credit reporting agencies to report their  
12 information quickly and accurately. We recognize that.

13 And the credit reporting agencies and consumers rely  
14 on the creditors to report information about the consumers  
15 accurately to the credit reporting agencies. Because,  
16 remember, the credit reporting agencies are the ones that are  
17 receiving information from furnishers of information.

18 They're not the ones developing the information.  
19 They are taking the billions of updates that are coming in on a  
20 regular basis and matching it, but they're not creating that  
21 information. The creditors provide the information, the  
22 consumers provide the information. So the credit reporting  
23 agencies also have to rely on the creditors and the consumers  
24 to provide accurate and complete information. So it is a  
25 sharing of information that occurs all the way around.

## Opening Statement - By Ms. Sumner

94

1 Now, let's talk a little bit about accuracy, because  
2 that's another word that you're going to hear over and over  
3 again during this trial. There will be several terms you will  
4 hear over and over again; you'll be tired about hearing, before  
5 the end of this trial. But Ms. Fortney will talk about, in the  
6 meaning of the statute, what is the maximum accuracy in credit  
7 reports and how is that evaluated under a reasonableness  
8 standard.

9 And credit reporting agencies are to follow  
10 reasonable procedures to assure maximum possible accuracy of  
11 the information concerning the individual about whom the report  
12 relates. And they are to conduct reasonable investigations to  
13 determine whether disputed information is inaccurate.

14 So, again, these are reasonableness standards that  
15 have to be considered in the context of the situation, and  
16 Equifax places great emphasis on accuracy. And in addition to  
17 Ms. Fortney, you're going to hear from our own Equifax  
18 witnesses why it's important to focus on accuracy. Because  
19 Equifax, obviously, is a company, and it does sell credit  
20 reports. If it has a record of selling inaccurate credit  
21 reports, it would not stay in business.

22 It has not been in business for over a hundred years  
23 because it reports inaccurate information. Its customers want  
24 information, both the customers that are the creditors and the  
25 customers that are the consumers. And Equifax strives to

## Opening Statement - By Ms. Sumner

1 achieve that because that is the lifeblood of this company, to  
2 achieve a very accurate high standard.

3 And they have systems, codes, policies, procedures in  
4 order to be efficient. But the primary thing is they're also  
5 in place so that Equifax information can be accurate. They  
6 don't get paid more for bad information. They just simply  
7 would lose customers.

8 And Equifax continues to try to improve its system,  
9 to improve its sufficiency, to improve its accuracy. But we  
10 can't ever expect that kind of a system to be perfect. It is  
11 not possible.

12 And in handling this amount of data with this many  
13 bits and bytes of information that comes in from all over the  
14 United States every hour on the hour, it will never be perfect.  
15 And the Fair Credit Reporting Act doesn't expect it to be  
16 perfect.

17 Now, we do acknowledge that Equifax should have done  
18 a lot better than it did with Ms. Miller. And you will hear  
19 how some of the agents made mistakes in evaluating her  
20 circumstance, which was unusual and which provided information  
21 that set up a confusing circumstance.

22 And you will hear our Equifax representative talk  
23 about the steps that Equifax has taken in order to train agents  
24 on this particular type of circumstance, but they can't  
25 forecast every possible scenario that would come out of

## Opening Statement - By Ms. Sumner

96

1 managing 250 million consumer reports.

2 So let's talk, just briefly, about the circumstances  
3 here. You'll hear Ms. Fortney talk about why Julie M. Miller's  
4 file combined with another Julie M. Miller's credit file. And  
5 you'll hear Ms. Dixon discuss what happened when Ms. Miller  
6 disputed the inaccurate information from the other Julie M.  
7 Miller, and when the files combined.

8 Before we talk about that combination of events,  
9 though, let's talk about some important facts concerning  
10 Ms. Miller's experience with the other two CRAs.

11 Mr. Baxter didn't talk much about her experience with  
12 TransUnion and Experian. And she sued them both because of a  
13 mixture of her file with another file.

14 And when the other two CRAs mixed her file, at that  
15 point Equifax hadn't done so. And you will hear that  
16 Ms. Miller is claiming that the damages against Equifax from  
17 mixing her file -- but she can't really distinguish, herself,  
18 from the damages that was caused by the mixing of her file by  
19 other CRAs because it all happened relatively close in time.

20 That's a problem for Ms. Miller, because she's not  
21 entitled to recover damages from Equifax unless she can prove  
22 that Equifax caused those damages and that the damages weren't  
23 caused by someone else or another entity.

24 We recognize that Ms. Miller had to deal with some  
25 problems with her credit reports. That's never fun. She had



## Opening Statement - By Ms. Sumner

97

1 to deal with it with the other two CRAs, which had some similar  
2 problems in this circumstance, and with Equifax as well.

3 So you will hear Ms. Leslie explain, when that  
4 information came in, she'll walk you through the process that  
5 we talked about earlier with the matching. And she'll explain  
6 that this was a very close and unusual matching circumstance.

7 Now, Mr. Baxter didn't really go into how the  
8 matching worked. He focused on why you might think that  
9 they're very distinguishable. But you will see from  
10 Ms. Leslie's testimony that these two individuals are very,  
11 very close in their identification. And you will hear  
12 testimony that it was highly unusual that all of these factors  
13 aligned so that when you looked at their identification  
14 information, it appeared as if it was one person.

15 And Ms. Mixon will talk with you about the impact of  
16 that unusual online combine which created the confusing  
17 situation involving a file with an ID that matched Ms. Miller's  
18 file very closely, and it created some unique challenges to  
19 understand what happened.

20 And Ms. Mixon will discuss in detail what procedures  
21 were in place to address it, and why there may -- why agents --  
22 or the steps that agents took in order to -- to sort out the  
23 issue.

24 So one of the things that she's going to talk about  
25 is in the policies and procedures. Before a reinvestigation is

## Opening Statement - By Ms. Sumner

98

1 triggered, there are some steps that an agent has to go  
2 through. One is seeking appropriate identification  
3 information. And there are some very specific requirements.  
4 For example, a truncated Social Security number may not be  
5 sufficient. Because, as I've already told you, we have such  
6 close matches sometimes with Social Security numbers, you need  
7 to have the full Social Security number.

8           So that you'll see -- and I'm not going to spend a  
9 lot more time going over the details here, because it's all  
10 going to come out in the evidence.

11           But you'll see, it wasn't as if every time that  
12 Ms. Miller provided identification information it was  
13 sufficient to support that she was the right match. There --  
14 sometimes what she provided was not sufficient, according to  
15 the procedures. But I've already told you the agents made some  
16 mistakes, and we've acknowledged that.

17           They should not have sent a file disclosure to her  
18 one time when she didn't provide sufficient ID information, and  
19 they did. And they sent the wrong form letter at a time when  
20 they should have sent her a letter -- and this is on your --  
21 your -- it should be on your screen, where it sort of shows  
22 which way you go.

23           Once you get the consumer information, then you have  
24 sort of two choices, and it depends on what you choose as to  
25 what form letter the agent sends out.

## Opening Statement - By Ms. Sumner

99

1           Here, if -- Ms. Mixon will explain that if the ID  
2 doesn't match, then the reinvestigation should occur only if  
3 certain information differs. So if the address differs or the  
4 date of birth differs or if the name differs.

5           But the agents should not start a reinvestigation if  
6 the Social Security number differs or the name differs.

7           So here we had a slight variation of a Social  
8 Security number, which meant that a reinvestigation should not  
9 have been triggered at that point but that there should have  
10 been further investigation to determine whether or not they had  
11 the right consumer.

12           So there was a lot of back and forth in terms of  
13 requests for identification as the agents were requesting  
14 information from her.

15           And at one point they sent the wrong form letter,  
16 which triggered -- which was the -- the language that  
17 Mr. Baxter pointed out to you, which said we're addressing your  
18 concerns. That's -- if she had provided appropriate  
19 identification information and the social security numbers had  
20 matched, then they could have started an investigation and  
21 addressed her concerns. She should have sent the letter that  
22 says, We haven't found your file. They sent the wrong form  
23 letter.

24           Now, the agents also could have escalated this issue  
25 to the Office of Consumer Affairs. That's sort of a special

Opening Statement - By Ms. Sumner

100

1 group that is trained to -- to try to address unusual  
2 circumstances. Unfortunately, here, they didn't escalate it.  
3 And Ms. Mixon will acknowledge that if the agents had escalated  
4 it to that group of people who have specialization, then that  
5 may have provided a different story.

6 So, unfortunately, it didn't come to that office's  
7 attention until she filed a lawsuit. And, at that point, they  
8 went through the proper steps in order to separate those files.  
9 So the fact that our witness -- our representatives acknowledge  
10 errors, that's not a gotcha moment. It is something that we  
11 have already agreed occurred. The distinction here is whether  
12 those errors rise to the level that Ms. Miller is claiming.  
13 Did we negligently violate the FC -- FCRA, or did Equifax  
14 willfully try to violate her rights? That's what we submit to  
15 you you will not see evidence to support.

16 Now, Mr. Baxter also repeatedly said that Equifax  
17 lied to her. I think that's an unfair characterization of what  
18 occurred. Equifax agents submitted the wrong form letter.

19 Did the form letter accurately say what was  
20 occurring? No, it didn't. Was it an intentional lie? Did  
21 they try to mislead Ms. Miller? I don't think the evidence  
22 will reflect that.

23 As I mentioned, we don't believe that the evidence  
24 will reflect that -- that Equifax negligently violated the  
25 FCRA, or that Ms. Miller has proved that she suffered actual

Opening Statement - By Ms. Sumner

101

1 damages as a result of any specific negligent violation of the  
2 Fair Credit Reporting Act.

3           Importantly, she's not alleged any economic damages  
4 here. There's no evidence of actual financial losses. What  
5 she will present to you and allege to you is that she suffered  
6 emotionally as a result of this.

7           But as I previewed for you earlier, there are two  
8 other CRAs involved in this process, and she cannot segregate  
9 the frustration that she experienced in dealing with the other  
10 two CRAs from what she later experienced from Equifax.

11           And as is clear from Mr. Baxter's opening remarks,  
12 this case is really about Ms. Miller's allegations that  
13 Equifax's conduct was willful.

14           In other words, she argues that Equifax acted with  
15 knowledge that it was violating the law, that it knew it was  
16 violating the law, or that it recklessly disregarded the law.  
17 And although it's her burden to prove that willfulness, I  
18 expect the evidence to show that Equifax didn't act willfully.  
19 That Equifax didn't blow away the FCRA requirements, as  
20 Mr. Baxter asserts. Rather, that Equifax had in place  
21 reasonable policies and procedures. That this was an unusual  
22 circumstance that tripped up some agents who admittedly made  
23 some mistakes, and that Equifax fixed the problem and corrected  
24 the credit report once it understood what the problem was.

25           Now, at the end of the evidence, the Court will

Opening Statement - By Ms. Sumner

102

1 instruct you on the law. And Mr. Baxter's version of what the  
2 FCRA requires is not what controls. It's the elements that  
3 your Honor will provide.

4 And it is very important, though, for you to think  
5 about each of those elements, and that is where your unanimous  
6 agreement comes into play. And we respectfully submit that  
7 when you apply those jury instructions to the fact of this  
8 case, that you will find that Ms. Miller has not met her burden  
9 of proving either that Equifax negligently violated the law  
10 and, particularly, that Equifax did not willfully violate the  
11 law.

12 And so I will be back before you at the end of the  
13 trial, asking you to return a verdict for Equifax. And I  
14 sincerely thank you for your time and attention.

15 THE COURT: Thank you, Ms. Sumner.

16 So, Ms. Boyer, would you move the podium, please.

17 Jurors, as I mentioned earlier, the parties have  
18 assembled exhibits in a notebook. There will be one for each  
19 of you.

20 I find it a little hefty, you know, to have on  
21 your -- my lap, if I was in your shoes. So you're free to put  
22 it down to the side or to pick it up as you choose.

23 You don't have to use it at all. It's there, again,  
24 to be of use to you. So we'll pass those out in just a moment.

25 And as soon as that's all accomplished, we'll start

Opening Statement - By Ms. Sumner

103

1 with the first witness. All right?

2 We'll go until about 3:00, 3:15. At that point we'll  
3 take an afternoon recess. So let us just get these logistics  
4 set up.

5 Mr. Baxter, you can give those to Ms. Boyer to pass  
6 out, please.

7 Danny, would you help her, if you would like, to pass  
8 out notebooks.

9 (Pause, notebooks being passed to jurors.)

10 THE COURT: So, again, jurors, you can consider this  
11 just another part of your personal notes. You can mark on  
12 them. Use them as you choose. And at the end of the  
13 deliberations, your notes will be destroyed. It's just there  
14 for you to use as you choose.

15 Mr. Baxter, your first witness, please.

16 MR. MICHAEL BAXTER: Yes. I call Julie -- I call  
17 Ms. Julie Miller, your Honor.

18 THE COURT: Ms. Miller, would you come here, please,  
19 to the witness chair. Would you please come all the way up.  
20 And when you get to the chair, remain standing.

21 Thank you.

22 Face the jury and the deputy there. Raise your right  
23 hand to be sworn.

24 (Witness sworn.)

25 THE WITNESS: Yes.

Miller - D

104

1 THE CLERK: Please take a seat.

2 THE COURT: I need you to pull yourself in, as close  
3 as you can get to the microphone there. I know the chair is a  
4 little hard to move.

5 All right. Pull the microphone down, and close to  
6 you. There you go.

7 Tell us your full name, and spell all of it, please.

8 THE WITNESS: Julie Marie Alt Miller. J U L I E.  
9 Marie, M A R I E. Alt, A L T. Miller, M I L L E R.

10 THE COURT: Thank you.

11 And try to keep your voice up, so that all of the  
12 jurors can hear you.

13 Counsel.

14 MR. MICHAEL BAXTER: Sure. Thank you, your Honor.

15 DIRECT EXAMINATION

16 BY MR. MICHAEL BAXTER:

17 Q. Ms. Miller, are you married?

18 A. Yes.

19 Q. And what is your husband's name?

20 A. Rick.

21 Q. And do you have any children?

22 A. Yes.

23 Q. And how many?

24 A. Two sons.

25 Q. And where do you reside?



1 A. 13037 Maple Leaf Court, Northeast, Aurora, Oregon.

2 Q. Okay. And do you own your home?

3 A. Yes.

4 Q. Are you involved in the community at all?

5 A. Yes. I'm -- I was on the Pryview (phonetic) Sports Board  
6 for 15 years. I volunteer in the classroom. I was involved in  
7 parent group, boosters club -- or still am. And I am on my  
8 13th year on the school board.

9 Q. Okay. Would you tell the jury what you do for a living.

10 A. I'm a registered nurse.

11 Q. And are you employed by a particular physician?

12 A. Yes, I work for Carolyn Hale.

13 Q. And what is your approximate income?

14 A. About 50,000 a year.

15 Q. Okay. Would you tell the jury your educational  
16 background.

17 A. I went to Silverton High School, and I went to Oregon  
18 State for a year for pre-nursing. And then I went to Oregon  
19 Health Science University and graduated with a Bachelor's of  
20 Science in nursing.

21 Q. And where did you grow up?

22 A. Silverton. Out of Silverton, Oregon.

23 Q. Okay. When did you first learn that your credit reports  
24 were mixed with another person?

25 A. In -- around 2008.

1 Q. Can you tell the jury about that?

2 A. I had a denial of credit. So I ordered my three credit  
3 reports, and found that there was a lot of incorrect  
4 information on two of them.

5 Q. And which two were those credit reports?

6 A. TransUnion -- TransUnion and Experian.

7 Q. And what did you do?

8 A. I filed disputes with both of them.

9 Q. And after you filed those disputes with TransUnion and  
10 Experian, what happened?

11 A. They were corrected.

12 Q. Were you still denied credit in the fall of 2010?

13 A. Yes.

14 Q. And what credit reporting company was that denial based  
15 on?

16 A. Equifax.

17 Q. Were you denied in 2010 for -- from another -- from --  
18 also from Experian?

19 A. Yes. I think that's when there was still one lien that  
20 hadn't been removed.

21 Q. Okay. Now, at some point did you discover massive amounts  
22 of false information being reported by Equifax in your Equifax  
23 credit report?

24 MS. SUMNER: Leading, your Honor. Objection.

25 THE COURT: Sustained.

1           The witness needs to testify on her own, and she  
2 clearly is not an adverse witness to you, so please ask her  
3 open-ended questions.

4           MR. MICHAEL BAXTER: At some -- I'm sorry, your  
5 Honor.

6 BY MR. MICHAEL BAXTER:

7 Q. At some point did you order your Equifax credit report?

8 A. Yes.

9 Q. And what did you discover when you found -- when you saw  
10 it?

11 A. When it came, it had a different Social, a different birth  
12 date, numerous incorrect addresses, around 40 debt collection  
13 information that was not mine, wrong employers.

14 Q. And when did you learn this?

15 A. That was -- I think it was like the first part of 2010 or  
16 the end of 2009.

17 Q. And how did you learn that there were problems with your  
18 Equifax credit report?

19 A. I think what started that round was denial from KeyBank on  
20 a cash reserve type --

21 Q. Do you have an exhibit book in front of you?

22 A. Yes.

23 Q. Okay. Would you look at Exhibit 1.

24           Is that the denial from KeyBank you're speaking in  
25 terms of?

1 A. Yes.

2 THE COURT: Excuse me. Excuse me just a second,  
3 Counsel.

4 I just want to make sure the jurors know, all of the  
5 exhibits that you have are in evidence. So they're part of the  
6 evidentiary record. They're not things that will be admitted  
7 or not. So this is all already before you, as of now.

8 Excuse me, Mr. Baxter.

9 MR. MICHAEL BAXTER: Okay. Thank you.

10 BY MR. MICHAEL BAXTER:

11 Q. Why did you apply for a loan with KeyBank in December of  
12 2009?

13 A. This was a cash reserve option on a joint account with my  
14 son.

15 Q. Did you physically go to KeyBank with your son?

16 A. Yes.

17 Q. And at a particular branch of KeyBank that you went to?

18 A. Our local branch in Hubbard.

19 Q. Is that the bank branch that you bank with?

20 A. Yes.

21 Q. Would you tell the jury what happened.

22 A. I went in and co-signed with him, and then later received  
23 the letter of denial. This letter of denial.

24 Q. Did the denial letter indicate what was the basis for  
25 their denial?

1 A. Yes. It says here, in the mid-section, that it was based  
2 on an Equifax credit report.

3 Q. And did that surprise you?

4 A. I was very surprised, because I thought we had, you know,  
5 cleared up all of the credit issues. And we always pay our  
6 bills on time. We've never been delinquent. So I -- I was  
7 shocked.

8 Q. Does Exhibit 1 list the reasons in the Equifax credit  
9 report that caused the denial?

10 A. Yes.

11 Q. What are those reasons?

12 A. Recency of derogatory credit bureau rating and  
13 excessive -- excessive number of 30-day delinquencies reported.

14 Q. Now, at the time that you applied for this loan at KeyBank  
15 did you have any accounts that were delinquent?

16 A. No. We have never had any delinquent accounts.

17 Q. What about your son Zack? Does he have any delinquent  
18 accounts?

19 A. No.

20 Q. What happened next?

21 A. I think right after -- after this, I had ordered the  
22 credit report from Equifax.

23 Q. And did Equifax respond to your request?

24 A. Yes.

25 Q. Would you turn to Exhibit 2. What is Exhibit 2?

Miller - D

110

1 A. A response from Equifax, requesting more information.

2 Q. And did you provide the additional information that  
3 Equifax was requesting?

4 A. Yes.

5 Q. What did you provide?

6 A. Pay stub from one of my employers and a Century tel -- a  
7 telephone bill.

8 Q. And did that identifying information include your current  
9 mailing address?

10 A. Yes.

11 Q. And did it include documents with your Social Security  
12 number?

13 A. The pay stub had my Social, but I think I only -- I only  
14 exposed part of the Social.

15 Q. And why -- were you concerned about your identification?

16 A. Yes. I don't like sending this kind of information  
17 through the mail because of all of the issues with identity  
18 theft. We live in a really rural area and use a mailbox, and  
19 people get their things stolen all the time. So it was -- it  
20 was scary.

21 And I think on their form, somewhere, I recall seeing  
22 a place where you -- you didn't always have to put your whole  
23 Social. But, anyway, at this particular time, I did not put  
24 the whole Social on.

25 Q. Did Equifax send you a copy of your credit report?

Miller - D

111

1 A. After this letter, I believe so.

2 Q. Okay. Would you turn to Exhibit 5. What is Exhibit 5?

3 A. It's a copy of the -- my credit report.

4 Q. Is that a copy of your January 18th, 2010, Equifax credit  
5 report?

6 A. Yes.

7 Q. When you received it, did you -- did you review the credit  
8 report?

9 A. Yes.

10 Q. And -- hang on.

11 Did -- would you read, in the first paragraph of  
12 Exhibit 5, this section beginning -- which says, "Great care."

13 A. Great care has been taken to report this information  
14 correctly. Please help us, in -- in achieving  
15 even greater accuracy by reviewing all of the  
16 enclosed material carefully.

17 Q. Okay. And when you reviewed your credit report, did you  
18 believe that statement was accurate?

19 A. No, because I had already sent my Social a couple of  
20 times, and I had received someone else's Social. And so I was  
21 totally freaked out and dismayed because I didn't know where my  
22 Social was. And here I'm receiving someone else's. I felt I  
23 was violating another person. And then I was scared for  
24 myself, not knowing where -- where my information was.

25 Q. Okay. Would you turn to page 3 of your January 18th,

1 2010, credit report, Exhibit 5.

2 A. Page 3?

3 Q. Um-hmm. Tell me when you're there.

4 A. Oh, I'm there.

5 Q. Can you tell the jury what information didn't belong to  
6 you that was in that credit report?

7 A. The Social Security number, the date of birth, our -- our  
8 address was there. An old address of ours was there. But  
9 there was a couple other addresses that weren't ours. The  
10 employment information was in -- incorrect. And then there's  
11 approximately 40 collection service information here that's not  
12 ours.

13 Q. Were there also other derogatory accounts, besides the  
14 collections, on your credit report?

15 A. Yes.

16 Q. Well, now, what was your reaction when you got this  
17 report?

18 A. I was very frustrated and alarmed and scared, and just  
19 kind of my heart sank. I was overwhelmed by all of this  
20 incorrect information.

21 Q. Now, on the front page, this is page 3 of your credit  
22 report.

23 Do you see all of these collections there?

24 A. Which page?

25 Q. Page 3 of your credit report.



1 A. Oh, yeah.

2 Q. Are any of those collections yours?

3 A. No.

4 Q. What about page 2? Are any of the collections on page 2  
5 yours?

6 A. Page 2 is a different -- it's --

7 Q. Oh, I'm sorry. Page 4, at the bottom. Page 4 of 14.

8 A. No.

9 Q. What about page 5 of 14. Are any of those collections  
10 yours?

11 A. No.

12 Q. Are there any other accounts on your credit report that  
13 didn't belong to you besides the collections?

14 A. Yes. There are some accounts listed. I think page 5 is  
15 us, but on page 7 --

16 Q. For example, on page 8 --

17 A. Or, yeah. I can't read this very well.

18 Q. Do you have an account with Portfolio Recovery?

19 A. No.

20 Q. Would you turn to page 11 of this credit report.

21 This is -- this is the page that says, "A summary of  
22 your rights."

23 A. Um-hmm.

24 Q. Would you read the section beginning with "you have the  
25 right to dispute."

1 A. You have the right to dispute incomplete or inaccurate  
2 information. If you identify information in your  
3 file that is incomplete or inaccurate, and report  
4 it to the consumer reporting agency, the agency  
5 must investigate unless your dispute is frivolous.

6 Q. Did you attempt to resolve these false accounts with  
7 Equifax the same way you did with Experian and TransUnion?

8 A. Yes.

9 Q. What did you do?

10 A. I filled out their -- well, I copied, highlighted, wrote a  
11 letter, and sent it all in to them.

12 Q. Would you turn to page 8 -- or, I'm sorry, Exhibit 8.  
13 Tell me when you're there.

14 A. Under No. 8?

15 Q. Yes, Exhibit No. 8.

16 A. Okay.

17 Q. Would you tell the jury what this letter is.

18 A. This is the letter I sent with the dispute information.

19 Q. And how did you mail this letter?

20 A. Certified.

21 Q. And why did you do that?

22 A. I wanted to make sure that the information was being  
23 received.

24 Q. Now, would you read the first sentence to yourself and --  
25 of your dispute, and then explain what you are saying in that

1 sentence, when -- what you're trying to tell Equifax.

2 A. I was just trying to convey how frustrated I -- and upset  
3 I was, and amazed to get this much incorrect information.

4 Q. Now, I notice there's handwriting on this document. Can  
5 you explain that?

6 A. That's the information that I enclosed with this letter,  
7 when I mailed the packet to them.

8 Q. Now, would you -- read to yourself paragraph 2. And then  
9 explain to the jury, in summary form, what you're trying to  
10 tell there, Equifax in summary, in paragraph 2.

11 A. It was just -- so to summarize what I was saying, was,  
12 again, my concern for my identity, with all of the identity  
13 theft, et cetera, and how frustrated and upset. I had no  
14 information on where my own personal information had gone. And  
15 here I have someone else's information and a lot of incorrect  
16 information.

17 And, again, because of the identity theft, I was  
18 really concerned about that.

19 Q. And will you summarize paragraph 3 for the jury.

20 A. I summarized what was incorrect about the report.

21 Q. Did you attempt to keep track of everything that happened  
22 with your communications with Equifax?

23 A. Yes.

24 Q. And why did you keep track -- keep these notes?

25 A. The main reason is because my background is in medicine.

Miller - D

116

1 And in the medical world, everything is documented. So I --  
2 if -- you know, you just need to write it down so you know that  
3 you did it, and when I did it. And then also this had been  
4 going on for a while and was getting pretty repetitive. And  
5 just to try to keep track, I kept notes for myself, as well.

6 Q. Now, when you mailed this January 25th letter to Equifax,  
7 did you include anything in the letter?

8 A. Yes. What I wrote at the bottom, the copies of the report  
9 I had received, that had been highlighted with incorrect  
10 information. And my letter and their letter.

11 Q. Now, would you look at Exhibit 6. Tell me when you're  
12 there.

13 A. I'm there.

14 Q. Okay. I will tell you, this is Equifax's copy of the  
15 credit report.

16 Is the highlighting you're talking about noted on  
17 their copy of your credit report you submitted?

18 A. Yes. It's kind of darkened from the highlighter.

19 Q. Okay. Let's turn to page 9 of Exhibit 5.

20 Tell me when you're there.

21 A. I'm there.

22 Q. Does this -- does this page show -- what does this page  
23 show to you?

24 A. I think this is in -- inquiries that other companies made.

25 Q. Are any of the companies that are listed on this credit

Miller - D

117

1 report companies which you do business with?

2 A. There are some, yes.

3 Q. What -- can you tell the jury what those are?

4 A. KeyBank Penney's. I think those are the two.

5 Q. Are any of the inquiries showing companies that you do not  
6 do business with?

7 A. Yes.

8 Q. And what are some of those?

9 A. Oh, Cox Communication is one.

10 Q. Okay. Now, does this credit report -- in addition to the  
11 information that does not belong to you, does it also include  
12 your personal accounts and information?

13 A. Yes.

14 Q. Did Equifax respond to Exhibit 8, your January 25th, 2010,  
15 dispute letter?

16 A. Yes.

17 Q. And how did they respond?

18 I tell you what. Why don't you look at Exhibit 9.

19 A. I sent information to them, like 13 different times. So I  
20 get confused as to which letter came, in what order. So --  
21 sorry about that. So -- this is No. 9.

22 Q. Is Exhibit 9 Equifax's response to your January 25  
23 dispute?

24 A. Yes.

25 Q. And would you read the first line of Equifax's response to

1 the jury.

2 A. We received your request concerning your Equifax credit  
3 file and have addressed your concerns.

4 Q. Had Equifax addressed your concerns?

5 A. Not to my knowledge.

6 Q. What were your concerns?

7 A. That my file had been mixed, and a lot of incorrect  
8 information, and I had no idea where my information was.

9 Q. And would you read the first -- up to the -- the comma of  
10 the first sentence of the second paragraph to the jury.

11 A. In order to receive the results of the investigation, a  
12 copy of one item in each of the categories below  
13 is needed in order to verify your identification  
14 and address.

15 Q. Did you want to know what Equifax had concluded in their  
16 investigation?

17 A. Yes. Yes, I was hoping to -- that it was going to come  
18 back corrected.

19 Q. And what did you do next?

20 A. I sent information from their two categories that they  
21 were requesting back to them.

22 Q. And does Equifax have a section on here, on the bottom, in  
23 a box -- would you read that -- the -- the bold print to the  
24 jury.

25 A. The F.B.I. has named identity theft as the

1 fastest-growing crime in America.

2 Q. What did you think when you read that?

3 A. Well, I -- unfortunately, I was very concerned about that.  
4 That was my whole concern. And it was really concerning that I  
5 wasn't making any progress. Because I take my Social Security  
6 number very securely and safely, and I remember when I got it.  
7 And it's just something that -- that information should be  
8 secure. And I was shocked that I was having such a hard time  
9 finding out about it.

10 Q. How did you respond to Equifax's February 5th, 2010,  
11 response?

12 A. I sent the information -- the identifying information that  
13 they requested again.

14 Q. Would you turn to Exhibit 10.

15 What is Exhibit 10?

16 A. It's a letter I -- I wrote when I sent in the other  
17 identifying information.

18 Q. And what other identifying information did you provide  
19 with your dispute?

20 A. My driver's license and a pay stub with my address and  
21 Social Security number.

22 Q. Now, at the bottom of Exhibit 10 it says, Enclosures,  
23 quote, for, colon, your letter. What do you mean by "your  
24 letter"?

25 A. I also included the request letter that they had mailed to

1 me.

2 Q. So were you -- what were you trying to get acrossed to  
3 them by sending them their own letter?

4 A. Well, I -- just wanted to try to make sure I did  
5 everything right and that they had all of the cross-linked ID  
6 numbers, and everything, since our Socials weren't matching up.

7 So I just copied the whole letter, thinking there  
8 might be some numbers on there that would help identify my  
9 information.

10 Q. Okay. And would you explain to the jury what you told  
11 Equifax in the first paragraph of your February 11, 2010,  
12 letter.

13 A. Well, I paraphrased their last paragraph on their letter  
14 about identity theft, because I was really feeling concerned  
15 about my Social and where it was. And so I just was telling  
16 them that they needed to look at my Social and birth date, and  
17 try to -- and I was -- I wanted to get some information about  
18 where my information was.

19 Q. So was there a fear of -- that Equifax might improperly  
20 release your identifying information?

21 A. Yes. I wasn't sure where that was.

22 Q. Now, I see in your letter you indicate that you're mixed  
23 with another person. How were you able to come to that  
24 conclusion?

25 A. There was some of our correct accounts on the credit



Miller - D

121

1 report. So that -- I mean -- so that's how I knew. And our  
2 address was on there.

3 Q. Did you recommend to Equifax how they could correct it?

4 A. Yes.

5 Q. What did you tell them?

6 A. Well, they just -- they needed to look at the Socials and  
7 the birth date more closely, and that they weren't exact  
8 matches. And that -- to clear the report.

9 Q. Now, later in this case, were you provided a corrected  
10 credit report from Equifax?

11 A. Much later. After we filed the suit.

12 Q. And did they follow your recommendations when they finally  
13 cleaned up your credit report?

14 A. Yes.

15 MS. SUMNER: Objection, your Honor. It's speculation  
16 as to what Equifax did.

17 THE COURT: I don't know if it is or isn't. I can't  
18 really tell what the question is calling for.

19 Can you rephrase it and perhaps address the issue.

20 BY MR. MICHAEL BAXTER:

21 Q. Sure. What was corrected in your credit report two and a  
22 half years later, after Equifax cleaned it up?

23 A. All of the information that I had disputed. The Social,  
24 the birth date, the addresses, the employment, all of the false  
25 creditors. All of the things that I had highlighted and

1 disputed had been removed.

2 Q. Did Equifax respond to this second dispute, this  
3 February 11 dispute?

4 A. Let's see. I think I got -- after this one, I got another  
5 credit report.

6 Q. Would you turn to Exhibit 12. What is Exhibit 12?

7 A. A copy of my -- the mixed credit report.

8 Q. And the first bold box, you see where it -- does it label  
9 what the -- you are receiving from Equifax there?

10 A. Results of your investigation.

11 Q. And would you read to the jury the first two lines of  
12 Exhibit 12.

13 A. Below are the results of your request for Equifax to  
14 reinvestigate certain elements of your Equifax  
15 credit file. Equifax contacted each source  
16 directly, and our investigation is now completed.  
17 If you have any additional questions or concerns,  
18 please contact the source of that information  
19 directly.

20 Q. Did you review the actual credit report behind the results  
21 of the investigation?

22 A. Yes.

23 Q. And tell me what you found.

24 A. It was still the same mixed incorrect information that  
25 they had sent me the first time. Nothing had changed.

Miller - D

1 Q. Did -- did -- from reviewing the report, did you believe  
2 Equifax had contacted the creditors, who provided the disputed  
3 information?

4 A. No, because nothing had changed. So it was very  
5 frustrate -- frustrating because, you know, again, I -- my --  
6 my Social is very important to me. And to have it -- not even  
7 know where it is, it was very alarming.

8 Q. And in your similar disputes to Experian and TransUnion,  
9 what happened after you made disputes to those companies?

10 A. They corrected my accounts, or credit report.

11 Q. Now, on the first page there, Equifax also recommends that  
12 you contact the sources directly if you want additional  
13 corrections. Did you do that?

14 A. No. And I don't really see how I could have, because this  
15 wasn't my information. This, in my opinion, wasn't really  
16 my -- my credit report. It was not really my job to -- or,  
17 again, I don't even know if I could have, because I don't have  
18 that Social. And they're the ones that sell my information,  
19 and I feel like they should be responsible for making sure that  
20 the information is correct.

21 Q. Now, if -- would you read to the jury the second paragraph  
22 of page 1 of Exhibit 12, beginning with "if you."

23 A. If you have any additional questions regarding the  
24 information provided to Equifax by the source of  
25 any information, please contact the source of that

1 information directly.

2 Q. So you did not contact any of the sources?

3 A. No.

4 Q. And the -- the paragraph above that, would you read that  
5 to the jury.

6 A. The "please be specific"? That one?

7 Q. Yes.

8 A. Please be specific with your concerns by listing the  
9 account names, numbers, and nature of the dispute.

10 Q. How did you feel when you read that?

11 A. Like I just said, I didn't feel like it was my  
12 responsibility. I didn't feel like this was even my credit  
13 report. It had some of my information, but the majority of it  
14 was not my information, I thought. And it's their job to clean  
15 it up.

16 Q. And had you already sent them a detailed credit report  
17 with the highlighted false information?

18 A. Yes.

19 Q. Would you read the first line of the notice to the  
20 consumers, in the bottom part of page 1 of Exhibit 12.

21 A. Upon receipt of your dispute, we first review and  
22 consider the relevant information you have  
23 submitted regarding the nature of your dispute.

24 Q. Do you believe there was any attempt to review the  
25 relevant information that you had submitted with your dispute?

Miller - D

125

1 A. Not at this time.

2 Q. Why not?

3 A. Nothing had changed. There was, you know, starting to be  
4 a little pattern of responses, but I wasn't getting any action.

5 Q. Now, would you -- would you read the paragraph, "If you  
6 still disagree," to the jury.

7 A. If you still disagree with an item after it has been  
8 verified, you may send to us a brief statement,  
9 not to exceed 100 words, explaining the nature of  
10 your dispute. Your statement will become part of  
11 your credit file, and will be disclosed each time  
12 that your credit file is accessed.

13 Q. Did you send in any statements to Equifax to include on  
14 your credit file?

15 A. No.

16 Q. Why not?

17 A. Well, for one, all of the items I would have been  
18 disputing were not my items to -- they were not my credit  
19 information, and I didn't believe that it would be helpful.

20 Q. Now, you have made two disputes to Equifax. Was a single  
21 piece or a single item of the information that you disputed in  
22 those first two disputes corrected in this February 23, 2010,  
23 credit report?

24 A. No.

25 MS. SUMNER: Your Honor, I'm going to object again to

Miller - D

126

1 continue to leading the witness.

2 THE COURT: I don't think that's leading, it's a  
3 summary of the prior testimony. The objection is overruled.  
4 The answer stands.

5 Go ahead.

6 THE WITNESS: No, nothing had changed on the credit  
7 report.

8 BY MR. MICHAEL BAXTER:

9 Q. Did it appear that Equifax had taken any steps to protect  
10 your identity?

11 MS. SUMNER: Your Honor, same objection.

12 THE COURT: Overruled. Go ahead and answer the  
13 question.

14 THE WITNESS: No. I was very concerned because they  
15 hadn't responded to my questions as to where my Social and my  
16 private information was, as well as the fact that I had someone  
17 else's.

18 BY MR. MICHAEL BAXTER:

19 Q. How are you feeling at this point?

20 A. I was feeling very frustrated and overwhelmed because I  
21 had repeated the process and I hadn't made any headway. And I  
22 had, you know, done this with other companies, and they did  
23 work with me. And I was not getting any cooperation, so I was  
24 just angry and frustrated.

25 Q. Were you later denied for credit again?

1 A. Yes.

2 Q. Would you turn to Exhibit 13. And tell the jury what this  
3 is.

4 A. I co-signed for a cash reserve credit that we had on --  
5 had the option for on one of our bank accounts.

6 Q. And were you accepted for that cash reserve?

7 A. No. We were denied.

8 Q. Why were you requesting an increase of the cash reserve?

9 A. Because we had the option. We had some other projects  
10 that we were planning for, so it seemed like a good option.

11 Q. What kind of projects were you planning for?

12 A. We wanted to build a shop, a big garage on our property.  
13 We had some things that were coming up with my disabled  
14 brother.

15 Q. Now, does this March 4th letter from KeyBank accept -- an  
16 acceptance or a denial of -- of application for credit?

17 A. Denial.

18 Q. And does it indicate the basis for that denial?

19 A. An Equifax credit report.

20 Q. And does it state the reasons in the denial on that  
21 Equifax credit report that caused the denial?

22 A. It says, "Collection Action."

23 Q. Now, again, is this KeyBank the bank you regularly do  
24 business with?

25 A. Yes.

Miller - D

1 Q. Did it concern you that KeyBank was being sent the Equifax  
2 credit report with all of these collections on it?

3 A. Yes. I live in this community, and -- and see these  
4 people regularly. And it was very disheartening to have my  
5 reputation tarnished when we worked so hard to pay our bills on  
6 time, live within our means. And, again, it's a small  
7 community, where people talk. So it was -- it was frustrating.

8 Q. Now, at some point did you attempt to obtain another  
9 Equifax credit report?

10 A. Yes.

11 Q. Would you turn to exhibit -- just a moment.

12 Do you remember when that occurred?

13 A. I think it was in February of -- was it February of 2010  
14 or 2011? 2011. I get confused which year we're in. 2011, I  
15 think.

16 Q. Okay. Would you turn to Exhibit 3. What is Exhibit 3?

17 A. It's a request for a credit report.

18 Q. Is this the request for a credit report that you sent on  
19 February 8th, 2011, to Equifax?

20 A. Yes.

21 Q. Did Equifax respond to your request for a credit report?

22 A. Yes.

23 Q. Initially, when you sent that letter, did they respond?

24 A. Not the first time. I had to send it again in March.

25 Q. And when you sent it again in March, how did you send it?



1 A. Certified mail.

2 Q. Did you receive a response?

3 A. That time I did receive a response, requesting more  
4 identification, again.

5 Q. Would you turn to Exhibit 14. Is this Equifax March 30  
6 response to your March 21 request for a credit report?

7 A. Yes.

8 Q. What was Equifax requesting in this letter?

9 A. They were requesting identifying information again.

10 Q. And what did you do?

11 A. I sent information from each category, as they were  
12 requesting.

13 Q. And how did you send that?

14 A. Certified mail.

15 Q. And what happened next?

16 A. I received an -- I -- another letter, requesting more  
17 information.

18 Q. Okay. Would you turn to Exhibit 15.

19 First, would you look at pages 2 and 3 of Exhibit 15.

20 Is this the information that you sent to Equifax when  
21 you received your credit report?

22 A. Yes.

23 Q. And Exhibit 15, page 3, does it include your Social  
24 Security number?

25 A. Yes.

1 Q. And it -- it's a full Social Security number. Correct?

2 A. Yes. The whole Social.

3 Q. And page 4, includes Equifax's copy of the envelope.

4 Correct?

5 A. Yes.

6 Q. And it shows your return address on that envelope?

7 A. Yes.

8 Q. Does -- does your return address match the address on your  
9 insurance bill?

10 A. Yes.

11 Q. Do you have any idea why your identifying information is  
12 not acceptable to Equifax?

13 A. No. But that's why -- at this time I sent the whole --  
14 you know, I was getting very frustrated. I had sent this in  
15 several times before, hadn't made any progress. I was trying  
16 to make sure I did everything correctly and clearly, and so I  
17 exposed myself again, by sending all of my information through  
18 the mail. But I don't know why they didn't accept it.

19 Q. And you sent this also by certified mail. Correct?

20 A. Yes.

21 Q. Now, after sending this -- oh, wait.

22 How did Equifax respond to this request?

23 A. I think, next, they requested more information again.

24 Q. Okay. Did you send requests for a credit report on  
25 February 8th, 2011; March 21, 2011; April 5th, 2011; and April

1 27, 2011?

2 A. Yes.

3 Q. Did Equifax provide you a credit report to any of those  
4 requests?

5 A. No.

6 Q. So what did you do next?

7 A. At this point I felt like a lost soul because I figured,  
8 for some reason, they could not -- that my Social was out in  
9 the cyber world and they couldn't identify me anymore. So I  
10 was just really frustrated.

11 And normally they had responded fairly quickly,  
12 within a reasonable amount of time. But then after the last  
13 one, I never received anything. So I did not really know what  
14 to think.

15 So, finally, I dug around and found a telephone  
16 number, and I tried calling.

17 Q. And do you remember when you made that telephone call?

18 A. June 28th.

19 Q. And why did you initially contact Equifax?

20 A. Because I had never received the credit report that I  
21 would -- had requested four times.

22 Q. And did you speak with someone from Equifax?

23 A. Yes. I spoke with their customer -- one of their customer  
24 service representatives named Allie.

25 Q. Now, would you tell the jury about that call.

Miller - D

1 A. First, she asked me all of the identifying information:  
2 Social, birth date, address, asked credit card information,  
3 mortgage, a lot of questions along that line.

4 Q. Did she ask you to mail in your Social Security number?

5 A. Yes. And I had told -- I told her that I had already  
6 mailed my identifying information many times to them. That she  
7 already had that.

8 Q. And what happened next in that conversation?

9 A. She put me on hold. And went and talked to someone. Then  
10 she came back and asked me the same questions again, all of the  
11 identifying information.

12 And then I think she -- that's when she put me on  
13 hold again. She said she was going to talk to her supervisor.  
14 And I was on hold for quite a long while. And she came back,  
15 and she said that for my safety, they weren't going to send me  
16 my current report and that I needed to contact all of my  
17 creditors myself to clear it up, and give them the correct  
18 Social Security number.

19 So I was, like, fuming and boiling and didn't know  
20 what to think. Because, again, I have someone else's  
21 information. I don't really think I can be correcting that  
22 information. And I told her that -- how can I dispute the  
23 credit report if I don't have the credit report?

24 I need it, to send it. And she said, Well, again, it  
25 was for my protection. They didn't want to send it. And

1 that -- then she finally said, You've been mixed with someone  
2 else.

3 And just kept pushing and said, Well, I need a copy  
4 of my credit report. And finally, at the end of our  
5 conversation, she said that I would receive it in five to seven  
6 business days.

7 Q. In that conversation, did Equifax agree to assist you in  
8 unmixing your file?

9 A. No.

10 Q. Did Allie or her supervisor ask you which accounts  
11 belonged to you and which ones did not?

12 A. No.

13 Q. What did they tell you you should do to get this mix  
14 corrected?

15 A. They said that I needed to call all of the creditors and  
16 vendors, and everyone, and give them the correct Social.

17 Q. How did you feel after this call?

18 A. I was infuriated. And I -- really overwhelmed. I was  
19 frustrated. I had no control over the situation. And I guess  
20 that -- that's like the biggest frustration is because I gave  
21 them all of the right information. I was hopeful, since they  
22 had actually said that they recognized that I was mixed, that  
23 maybe I would make some progress. But -- but nothing came of  
24 it.

25 Q. Now, other than the collections, are there any accounts

1 that do belong to you that are derogatory on your credit  
2 report?

3 A. No.

4 Q. How did you pay, for example, with credit cards, when you  
5 would get credit card bills?

6 A. We pay off our full account every month.

7 Q. Did Equifax indicate they're willing to submit your  
8 dispute of the false information to the creditors on your  
9 behalf?

10 A. No.

11 Q. I want you to turn to Exhibit 17.

12 Does -- on Exhibit 17, does that line summarize  
13 Equifax's conversation with you on that date?

14 A. From their side, yes. It says, Advised that customer  
15 needs to contact credit grantors to update her Social.

16 Q. Now, during the entire 2011, was there any other credit  
17 reporting agency besides Equifax reporting false information  
18 about you?

19 A. No.

20 Q. So by this time, your TransUnion and Experian credit  
21 reports were not mixed. Correct?

22 A. Correct.

23 Q. Did you eventually receive a credit report from this call?

24 A. Yes.

25 Q. Did the credit report you received, still contain errors?

1 A. Yes. It hadn't really changed much. Still had the wrong  
2 Social, the wrong birth date, numerous collections.

3 Q. And how did that make you feel?

4 A. Depressed, because I was hoping that, like I said, when I  
5 talked to them, that they admitted that I was mixed, and that  
6 maybe that they would get it fixed.

7 Q. What did you do next?

8 A. I disputed the -- the report they sent.

9 Q. Would you turn to Exhibit 20. What is Exhibit 20?

10 A. It's a letter that I sent with the dispute.

11 Q. And what's the date of this dispute?

12 A. July 18th, 2011.

13 Q. Okay. And if you would turn to page 4.

14 Wait a minute. Excuse me. Page 5. What is page 5?

15 A. That's the credit report, with the incorrect information.

16 Q. So did you highlight for Equifax all of the false  
17 information on the credit report?

18 A. Yes.

19 Q. Getting back to page 1 in your dispute, would you  
20 summarize paragraph 1 for the jury.

21 A. I just told them that I had requested five times, and had  
22 called to get my credit report, and that I was disputing the  
23 report that was sent again.

24 Q. And what about paragraph 2? Would you summarize that for  
25 the jury.

1 A. Basically, that, again, it was not my information, my  
2 Social, my birth date. And I had sent them all of this  
3 information five times and gave it on the telephone, and I  
4 still received somebody else's information.

5 Q. And would you summarize the third paragraph.

6 A. So, I was just explaining that I had highlighted the  
7 incorrect information on the form. And -- and I also had  
8 commented in another paragraph about -- that I was still  
9 concerned about the security of my own information.

10 THE COURT: Mr. Baxter, I just was curious if you can  
11 give me an estimate of how long the direct will be, as I'm  
12 trying to time the afternoon recess.

13 If it's a few more minutes, we'll keep at it.  
14 Otherwise, we'll take a break.

15 MR. MICHAEL BAXTER: I'm guessing 20 minutes, maybe.

16 THE COURT: I think we'll take a break then, just so  
17 that we let the jurors stretch their legs. So, ladies and  
18 gentlemen, on the recess you're free, as I said earlier, to  
19 talk about anything you would like except the case. It's very  
20 important you not talk about the case with each other or let  
21 anything about the case cross your path; others talking about  
22 it with you, investigating, and so forth.

23 We'll take 15 minutes.

24 Leave your notes in that notebook at your chair, so  
25 it will be there when you get back. And then in 15 minutes



Miller - D

137

1 we'll continue this direct examination.

2 Please follow Ms. Boyer.

3 Please stand for the jury.

4 (Jurors exit.)

5 THE COURT: Ms. Miller, you can step down for the  
6 recess.

7 Thank you, everyone. Please be seated.

8 Counsel, it appears to me, as I'm looking through the  
9 exhibits, that obviously Ms. Miller's Social Security number is  
10 written all over the exhibits. I think the jury would  
11 understand, but I -- I believe I probably should instruct them  
12 that this is private information that's before them only for  
13 purposes of the case. And, obviously, we expect that they  
14 cannot copy it or reproduce it or use it in any way. That it's  
15 in a protected form here. It's not a public record, and so  
16 forth.

17 Do you agree with that approach?

18 MR. MICHAEL BAXTER: I think that would be fantastic.

19 MS. SUMNER: Your Honor, I think a limiting  
20 instruction is appropriate, but I don't think that we need to  
21 draw too much attention to that; to make it clear that they're  
22 to leave that information in the courtroom and certainly not to  
23 take her private information out.

24 THE COURT: I -- I think I will convey the issue.

25 All right.

Miller - D

138

1 MS. SUMNER: Thank you.

2 THE COURT: So you say about 20 minutes more on  
3 direct, once we resume.

4 MR. MICHAEL BAXTER: Okay. Thank you.

5 THE COURT: Do you have any issues for the record at  
6 this point?

7 MR. MICHAEL BAXTER: No, your Honor.

8 THE COURT: Any for the defense at this point?

9 MS. SUMNER: I don't think so, your Honor.

10 THE COURT: Okay. 15 minutes.

11 (Recess taken.)

12 THE COURT: Thank you. Please be seated.

13 Are there any issues before we bring back the jury?

14 MR. MICHAEL BAXTER: Not for plaintiff.

15 THE COURT: All right. Ms. Miller, would you please  
16 resume the witness chair. Retake it, please. Ms. Boyer, would  
17 you bring the jury in.

18 Would you thank IT for getting me back, connected.

19 THE CLERK: Yes.

20 THE COURT: Thank you.

21 (Pause.)

22 THE COURT: Please rise for the jury.

23 (Jurors enter.)

24 THE COURT: Thank you, everyone. Please be seated.

25 All set, jurors?

Miller - D

139

1           Okay. Mr. Baxter.

2           MR. MICHAEL BAXTER: Thank you.

3 BY MR. MICHAEL BAXTER:

4 Q.   Returning to Exhibit 20, Ms. Miller.

5 A.   Um-hmm.

6 Q.   I was going to ask, the -- the handwritten notes, when  
7 were those put on the document?

8 A.   Usually the day I wrote the letter, or mailed it, or  
9 whatever I was doing with it.

10 Q.   And would you turn to the second page of Exhibit 20. And  
11 tell me what you were doing when you put this information in  
12 your dispute.

13 A.   I was extremely frustrated, and I was trying to figure out  
14 a way to make this information more clear, as to what needed to  
15 be removed. And so this was an attempt to make things as clear  
16 as possible.

17 Q.   So what you're -- you're listing more disputed information  
18 on that second page?

19 A.   Yes. Yes.

20 Q.   Okay. Turning to the next page. What is the next page,  
21 Exhibit 3 -- or page 3 of Exhibit 20?

22 A.   The research request form.

23 Q.   And where did you get this form?

24 A.   This is the form that comes with their packet, that I can  
25 fill out and put the -- the disputed information here.

1 Q. And I notice there is information that's crossed out and  
2 information that's written in.

3 Can you explain what you're doing here?

4 A. Right. Again, I'm just hoping that this is more clear of  
5 what the incorrect and correct information is.

6 Q. And I see that you have provided your e-mail address to  
7 Equifax. Did Equifax ever contact you at your e-mail address?

8 A. No.

9 Q. Turning to the next page, page 4. And I see here under  
10 daytime phone number, would you tell the jury what those phone  
11 numbers are that you provided?

12 A. Those are my cell phone and home phone number again and  
13 the e-mail, all hoping that they would contact me if they had  
14 questions so hopefully we could get this matter resolved. I  
15 don't usually like to give out my cell number. I just have it  
16 for my own security. But in this case, I was hoping it would  
17 be more helpful.

18 I put this kind of information on for the Experian  
19 and TransUnion. It seemed to -- to work, to get the matter  
20 cleared up.

21 Q. Above that, I see you've crossed out a Social Security  
22 number, date of birth, and there's another Social Security  
23 number and date of birth. Can you explain what those are?

24 A. So I was crossing out the incorrect, and putting in my  
25 own.

Miller - D

1 Q. Okay. And then why don't you go through what you did, for  
2 example, in this first collection information for all Columbia  
3 Collections.

4 A. Well, there were so many of them. I didn't --

5 Q. Well, just that first one. I -- what that writing means.

6 A. Oh, I just wrote in that I have never defaulted on any of  
7 my bills, never.

8 And, again, that's what I said when I filled out  
9 these forms before, for TransUnion and Experian, and that was  
10 accepted.

11 Q. And if you would turn to page 5 of Exhibit -- Exhibit 5 of  
12 page 20. Are you there?

13 A. Yes.

14 Q. And is all of the information that is highlighted false  
15 on -- on this credit report?

16 A. Yes.

17 Q. And the next page, page 6, is this all highlighted with  
18 false information?

19 A. Yes.

20 Q. Okay. Was there other information besides collection  
21 accounts that you were highlighting in here?

22 A. I don't think so.

23 Q. Can you turn to the next couple of pages. See if you see  
24 any other accounts that did not belong to you.

25 A. Hard to tell on this copy what's highlighted and what's --

1 Q. It is difficult to see in this.

2 A. Yeah.

3 Q. For example, turn to page 7. That's page 7 of 14. Are  
4 you there?

5 A. Yeah.

6 Q. Does the portfolio recovery account, is that highlighted?

7 A. I can't read it on this copy, but it looks like there's a  
8 couple of highlights on this page.

9 Q. Okay. And the next page, page 8.

10 Does that Visa account belong to you, at the top?

11 A. Yes.

12 Q. Okay. And then you have highlighted here numerous of  
13 these inquiries.

14 What does the highlighting mean on these inquiries?

15 A. On the same page 8 we're looking at?

16 Q. I'm looking at page 8. There's -- the inquiry page.

17 A. I don't think this is up here.

18 Q. It's page -- oh, I'm sorry. I'm confused. I'm looking at  
19 the wrong number here. It's page 10 of 12. I'm looking on the  
20 exhibit -- I was looking at the credit report. I apologize.

21 So it's page 10 of Exhibit 20.

22 A. Okay. What was the question? I'm sorry.

23 Q. Yeah, the highlighted inquiries there, what do they  
24 represent?

25 A. Oh, these are companies that I've never done any business

1 with.

2 Q. Okay. Can you read any of those companies?

3 A. I think there's one that says Clearwire, DISH Network,  
4 Swiss Colony. I can't read -- oh, Fingerhut.

5 Q. Okay. Turning to page 11 of 12, the next page.

6 Now, I notice some of the inquiries have been  
7 highlighted and some have not.

8 First, the ones that have not been highlighted, are  
9 those inquiries that belong to accounts that you have?

10 A. Yes, I believe so.

11 Q. And the inquiries that have been highlighted are accounts  
12 that do not belong to you. Correct?

13 A. Correct.

14 Q. And the same thing on page 12 of 12.

15 A. Correct.

16 Q. Okay. Were -- were you ever contacted by Equifax prior to  
17 sending -- prior to them sending out your credit file?

18 A. No.

19 Q. Now, after you sent in this dispute, did Equifax respond?

20 A. Yes.

21 Q. And would you turn to Exhibit 21.

22 Is this Equifax's response to your dispute?

23 A. Yes. They sent another form letter, requesting more  
24 identifying information.

25 Q. And, again, they're saying they've addressed your

1 concerns. Correct?

2 A. Right. And, again, it was really frustrating, not making  
3 any progress, trying to be as clear as possible. I felt  
4 trapped because I had no control of trying to get this  
5 information corrected. And I just kept getting these same form  
6 letters, and I -- it was just really worrisome.

7 Q. And at the bottom of the form, where it says, "F.B.I. has  
8 deemed identity theft," do you see that?

9 A. Um-hmm.

10 Q. Did you purchase their Equifax Credit Watch?

11 A. No. I -- I really would have no trust in this company.  
12 It would not be a place I would go for business, if I had a  
13 choice.

14 Q. Now, does this letter also -- could you read the first  
15 line in paragraph 2. Or the first -- to -- to the comma.

16 A. First line in paragraph 2?

17 Q. Yes.

18 A. In order to receive the results of the investigation, a  
19 copy of one item in each of the categories below is needed in  
20 order to verify your identification and address.

21 Q. Did you have any idea what identification would be  
22 acceptable to Equifax?

23 A. Well, it's pretty clear what they were requesting, and I  
24 thought I had met their request many times. And, like I said,  
25 this -- this -- this last dispute, I had tried to be super



1 clear with the information.

2 Q. Up till this point, has Equifax addressed any of your  
3 concerns?

4 A. No.

5 Q. Have they deleted any of the false information on your  
6 report?

7 A. No. It's just the same bad information over and over.

8 Q. Was there a concern by you of any misuse of your private  
9 information?

10 A. Very much so. That was one of my main concerns because I  
11 am getting someone else's private information, and I have no  
12 idea of where mine is. I'm assuming, at this point, that they  
13 don't either. And it could be being sent out everywhere.

14 Q. Did you respond to Equifax' July 28th, 2011, letter?

15 A. Yes. I mailed them again, what they were requesting.

16 Q. Would you turn to Exhibit 22. What is Exhibit 22?

17 A. It's a letter I added with the requested information.

18 Q. And what was your dispute in this letter?

19 A. Just the repetitive of the -- you know, the misinformation  
20 and the problem that I wasn't, you know, getting any action.  
21 And -- and I was still requesting and waiting for a corrected  
22 report.

23 Q. And turning to page 2 of Exhibit 22.

24 Is this an insurance bill that you submitted?

25 A. Yes.

1 Q. And page 3, the W-2 form that you submitted to Equifax?

2 A. Yes.

3 Q. Would you turn to Exhibit 22 -- I'm sorry. Exhibit 23.

4 No, 24. I'm sorry. Exhibit 24, your Equifax credit report.

5 When did you receive this credit report?

6 A. August 15, 2011.

7 Q. And had Equifax corrected any of the concerns addressed in  
8 your disputes?

9 A. No. It's just the same information, wrong information.  
10 Nothing had really changed. It was really unacceptable at this  
11 point. Very frustrating.

12 Q. Turning to page 3 of Exhibit 14. Is this a copy of your  
13 credit report?

14 A. Yes.

15 Q. Did you note that there were any changes by Equifax on it?

16 A. Not -- no. Not that I could see.

17 Q. Okay. Would you turn to page 8 of exhibit -- or I'm  
18 sorry. Page 8 and 9 of 14.

19 Tell me when you're there.

20 A. Page 8.

21 Q. Yes.

22 A. Okay.

23 Q. This one looks like you can read it a little bit better.

24 Would you read the bold print in the top box.

25 A. Inquiries that -- that display to companies may impact

1           your credit score.

2       Q.   Are any of the companies listed as inquiries here  
3       companies you've never done business with?

4       A.   All of them except for KeyBank are companies that I had  
5       not done business with.

6       Q.   And on the bottom is KeyBank. And I think if you turn to  
7       page 9, do you see KeyBank listed as the fourth account down?

8       A.   Yes.

9       Q.   Do you know what that "AR" represents?

10      A.   Account review.

11      Q.   Does it concern you they're sending this credit report to  
12      your bank to do an account review?

13      A.   Yes. It concerns me that they send my information to all  
14      of these companies around the country, that must think I'm --  
15      have bad credit. But especially the local people that I do  
16      business with.

17      Q.   Now, returning to page 8, at the top, where it says, These  
18      inquiries impact your credit score.

19               What is your understanding of what that means?

20      A.   Well, we've always been told that we had really good  
21      credit, the times that we have financed. It's usually -- our  
22      credit score had been in the 800s at one time. And so my  
23      understanding is every time there's an inquiry, that can affect  
24      your credit score, and it keeps going down. So I would  
25      assume -- I don't know what our credit score is right now,

1 but --

2 Q. How did you feel when you learned that Equifax was sending  
3 your personal financial information to companies that you had  
4 never done business with?

5 A. I was very frustrated because, you know, I feel like my  
6 information had been going all over the country. And -- but,  
7 basically, this was never going to be over. That it's always  
8 going to be hanging out there now, I think, over my head. So  
9 regardless of how this all pans out, if I ever want to do  
10 business with any of these companies, I'm not sure, you know,  
11 what might come of it.

12 Q. Okay. Would you turn to page 14 of Exhibit 24.

13 And would you read for the jury the top question --  
14 the answer to the top question, How can I correct a mistake on  
15 my credit file.

16 A. Complete the research request form and give details of  
17 the information you believe is incorrect. We will  
18 then check with the credit grantor, collection  
19 agency, or public records source to see if any  
20 error has been reported. Information that cannot  
21 be verified will be removed from your file. If  
22 you and a credit grantor disagree on any  
23 information, you will need to resolve the dispute  
24 directly with the credit grantor, who is the  
25 source of the information in question.

1 Q. To your knowledge, was Equifax sending any of your  
2 disputes to the credit grantors?

3 A. Not that I was aware of, because nothing had been changing  
4 on the credit report.

5 Q. To your knowledge, was any information which could not be  
6 verified removed from your file?

7 A. No, because I think it would have been an easy fix if they  
8 would have checked.

9 Q. Were you hopeful on all of these disputes that Equifax  
10 would finally get it right and correct your credit report?

11 A. Yes. That was why I was so persistent. I -- I wanted  
12 to -- to get my Social Security number -- I really felt like  
13 they had totally lost it and were being totally irresponsible  
14 with it. And that really is upsetting and frustrating and  
15 worrisome. And I felt it was their place to fix it.

16 Q. Would you turn to page -- page 11 of Exhibit 24.

17 Is this a summary of your rights that Equifax is  
18 providing you?

19 A. Yes.

20 Q. Would you read the paragraph, second from the bottom.

21 A. You have the right to dispute incomplete or inaccurate  
22 information. If you identify information in your  
23 file that is incomplete or inaccurate and report  
24 it to the consumer reporting agency, the agency  
25 must investigate, unless your dispute is

1                   frivolous.

2       Q.    And, I'm sorry.  Would you turn, again, to page 14 of  
3   Exhibit 24.

4                   And under the section "Facts you should know."

5                   How long is Equifax telling you that collection  
6   accounts will remain on your file?

7       A.    For seven years.

8       Q.    Would you turn, now, to Exhibit 26.

9                   What is Exhibit 26?

10      A.    My dispute of that credit report.

11      Q.    And would you outline for the jury what you're telling  
12   Equifax in paragraph 1.

13      A.    Basically that I had been working on this since February,  
14   and that there was an identity problem.  And I had exposed my  
15   information via the mail many times.  And just told them,  
16   again, that it was the wrong Social and birth date.

17      Q.    And would you outline paragraph 2.

18      A.    Just how frustrated and humiliating and out of control I  
19   felt in trying to get this corrected, and not knowing where my  
20   Social was.  And, again, just that there was the wrong Social  
21   that they kept sending me.

22      Q.    And would you outline what's in paragraph 3.

23      A.    I asked for a deadline on getting a report back, just  
24   because I had had some problems earlier in time.  So I put a  
25   timeline on there.  I enclosed the disputed information, and I

Miller - D

1 also enclosed the ID that they kept asking for, hoping that I  
2 could skip that -- that one step this time.

3 Q. Can you think of any way that you might have disputed to  
4 let Equifax know that your information was mixed with someone  
5 else, that you haven't tried?

6 A. No. Not that I was aware. Each time I -- I did this -- I  
7 don't know if you can tell -- but I was trying to be a little  
8 more clear and a little bit more clear, in case I was doing  
9 something wrong.

10 Q. Okay. Turn to page 2 of Exhibit 26.

11 And what is this?

12 A. This is the research request form.

13 Q. And I notice in this research request form you literally  
14 are handwriting out all of the Columbia's Collection Service  
15 accounts one by one. Is that what you did?

16 A. Yes.

17 Q. Did you think that might help?

18 A. I was hoping. It took a lot of time, but I was trying to  
19 be as clear as possible.

20 Q. Did Equifax send you results of an investigation within  
21 the 30 days you asked them to?

22 A. What's the date on this one? No.

23 Or did -- is that one they sent just requesting ID?  
24 I forget what comes next.

25 Q. If we could go further, and look at page 6 and 7 of

1 Exhibit 26.

2 Is this the identification that you submitted?

3 A. Yes.

4 Q. Did Equifax investigate the disputes, as outlined in your  
5 August 25th, 2011, letter?

6 A. Not that I was aware of.

7 Q. I want you to turn to Exhibit No. 27.

8 Tell me what this is.

9 A. This is the response I received from the dispute,  
10 requesting more identifying information.

11 Q. So this is Equifax's response to your August 25 dispute?

12 A. Yes.

13 Q. And, again, they say they addressed your concerns.

14 Did they address any of your concerns?

15 A. Not that I was aware of.

16 Q. And in order to receive the results of the investigation,  
17 you would need to send more identifying information.

18 How were you feeling when you read that this time?

19 A. I was speechless. I was out of words. I mean, I -- I was  
20 up to my limit. Concerned for my identity. Frustrated with  
21 the process. I was just overwhelmed.

22 Q. Did Equifax attempt to telephone you?

23 A. No.

24 Q. At this point, after two years, had Equifax addressed a  
25 single one of your concerns?



1 A. No.

2 Q. Were you still of the belief that if you send in  
3 identifying information that they would send you the results of  
4 their investigation?

5 A. I was hopeful, but I'm not sure I really believed it at  
6 this point.

7 Q. Were you -- what were your feelings about Equifax at this  
8 time?

9 A. I mean, normally I would not do business with a company  
10 like this, and I felt like they just kept send -- sending me  
11 form letter after form letter and not addressing my concerns.  
12 I felt trapped. I didn't know really what I could do. I had  
13 no control over the situation, which is a really frustrating,  
14 you know, feeling. I just was kind of running out of patience.  
15 I didn't really know what to do.

16 Q. Did you respond to Equifax's September 1, 2011, request  
17 for more identifying information?

18 A. Yes, I mailed in, again.

19 Q. And how did you respond?

20 A. I think they -- they requested more information again.

21 Q. Did you send in the identifying information that they  
22 requested?

23 A. Yes.

24 Q. And is page 3 and 4 the identifying information you sent  
25 again?

1 A. Yes.

2 Q. Did they send you the results of their investigation?

3 A. No.

4 Q. Would you turn to page 2 of Exhibit 28.

5 Is this what you received from Equifax in response to  
6 your dispute?

7 A. Yes. It was another -- the same form letter requesting  
8 the same information. And I was starting to -- the pattern was  
9 becoming the same as back in February, where at this point they  
10 weren't even sending the credit report anymore. They were just  
11 sending out the form letters.

12 Q. At this point in time, did you believe there was anything  
13 you could do, short of filing a lawsuit, to get Equifax to  
14 correct the false information in your credit file?

15 A. I felt I had been really clear what the request was. We  
16 had, you know, gone through this process before with TransUnion  
17 and Experian.

18 They had verbally said on the phone that they knew I  
19 was mixed.

20 I sent them all of the information they ever  
21 requested. I -- I -- I was pretty much -- had given up. Given  
22 up hope.

23 Q. And were there times that you did not apply for credit  
24 during this period?

25 A. Yes.

1 Q. And why would you not apply for credit?

2 A. Because I was -- assumed, pretty sure that I would be  
3 denied.

4 Q. Have there been changes in your life because of Equifax  
5 mixing you with this other person and refusing to correct the  
6 collections on your credit report?

7 A. We've delayed some of the things that we had, you know,  
8 planned to do, wanted to.

9 Q. For example, what have you delayed?

10 A. We were planning to build a shop on our property, and we  
11 were hoping to refinance the house while the interest rates  
12 were low.

13 Q. What was the interest rate on your house?

14 A. It was five and a quarter.

15 Q. After you got a clean credit report from Equifax, did you  
16 seek that refinancing?

17 A. Yes.

18 Q. Did you get a better interest rate?

19 A. Yes.

20 Q. Was there anything else that you were seeking to -- or  
21 seeking to finance?

22 A. We were trying to help my disabled brother. And we were  
23 going to get a loan to help purchase some things for him.

24 Q. And why didn't you seek that loan?

25 A. Because I thought we would be denied.

1 Q. Were you and your husband interested in any form of  
2 remodel?

3 A. No. Not at that time.

4 Q. Were you -- did -- did you wish to build a workshop?

5 A. Yeah.

6 Q. Tell us about that.

7 A. Well, his hobby is working on cars, muscle cars. And it's  
8 just always been a goal to -- to build a shop. And so we were  
9 close to being able to do that, but we needed to get some  
10 financing.

11 Q. Now, did you believe from Equifax mixing you with this  
12 other person that your reputation has been damaged?

13 A. Yes, because the local businesses that -- you know, that I  
14 work with -- it's a small community, and, you know, people  
15 talk. And, you know, I'm just concerned. I -- like I said,  
16 I'm on the school board, and I'm a person of integrity. And,  
17 you know, I don't want people thinking that I'm a deadbeat and  
18 I don't pay my bills.

19 Q. (Pause, referring.) Has your husband been working with  
20 you on these credit reportings -- issues as well?

21 A. We always, you know, went over them and talked about it,  
22 and shared the frustrations. And I did most of the -- the  
23 work, you know, filling out the paperwork and --

24 Q. Has working with him impacted you personally, in having to  
25 deal with this?

1 A. I'm not sure I know what you mean.

2 Q. Okay. How about -- do you believe that Equifax mixing you  
3 has impacted your privacy?

4 A. Oh, definitely. I have no idea of where my Social and  
5 birth date has traveled to, and it has been -- you know, it's  
6 been sold to all of these inquiry companies.

7 Q. Do you still have a concern about identity theft?

8 A. Yes, because --

9 Q. Explain.

10 A. Well, I exposed my information like 13 times. So it's  
11 gone out in the mail. They had misplaced it for two and a half  
12 years. So during that time it was going out to all kinds of  
13 different businesses and companies, and I have no idea, really,  
14 where all it probably ended up. So I feel like now that it's  
15 out in cyber world, that I'll never really -- it will never  
16 really be over, because things will keep popping up.

17 Q. Did the problems you had with TransUnion and Experian in  
18 2008 impact the -- how you were feeling when the same types of  
19 problems occurred with Equifax?

20 A. Yes and no. I mean, it was frustrating -- or it was  
21 just -- it was shocking, even with those reports, to see the  
22 mixed reports. But this one was petrifying and scary to me,  
23 because, like I said, I really treasure my Social Security  
24 number. And I didn't know where mine was, and I thought it was  
25 so irresponsible of a company. If they're giving me someone

Miller - X

158

1 else's Social, I have no idea where mine might have ended up.

2 Q. Now, you brought a claim for punitive damages. Why have  
3 you brought that claim?

4 A. Because I feel violated. My most private and personal  
5 information has been mishandled. I feel like they were  
6 reckless and irresponsible. You know, it's -- like I just  
7 said, it's been sent all over the country, maybe all over the  
8 world. I don't feel like I'll -- this will ever be totally  
9 behind me.

10 And I feel they -- they should be accountable for the  
11 blatant neglect that they -- on how they handled my  
12 information, and the fact that they would never address the  
13 disputes. And for all of the stress and frustration that I had  
14 to put up with and the time that was committed.

15 And I would hope that they would improve their  
16 practices, so that other people hopefully won't have to put up  
17 with this in the future.

18 MR. MICHAEL BAXTER: I have no other questions, your  
19 Honor.

20 THE COURT: All right. Thank you.

21 Cross.

22 MS. SUMNER: Your Honor, may I have permission to  
23 stand at the desk?

24 THE COURT: Yes. Yes. You may do so freely.

25 CROSS-EXAMINATION

1 BY MS. SUMNER:

2 Q. Good afternoon, Ms. Miller.

3 Now, you talked a little bit about the experiences  
4 you had with Experian and TransUnion. And you said the other  
5 companies worked with you. But you filed suits against both  
6 Experian and TransUnion. Correct?

7 A. Yes.

8 Q. And you understood at the time that you filed suit against  
9 those two CRAs that there was a third credit reporting agency  
10 that was called Equifax. Correct?

11 A. Yes.

12 Q. So during 2009, you were having difficulties correcting  
13 information on your credit files at both Experian and  
14 TransUnion. Correct?

15 A. Yes.

16 Q. And you hired a lawyer -- in fact, the Baxters -- to  
17 assist you with those problems. Is that right?

18 A. I handled all of the disputes and all of that. If you go  
19 to his website, he tells you exactly, you know, how to order  
20 your report and how to fill out the paperwork. So I did all of  
21 that.

22 Q. Did the Baxters represent you in your lawsuits against  
23 Experian and TransUnion, Ms. Miller?

24 A. Yes.

25 Q. And did some of the problems that you had with your credit

Miller - X

1 files of those CRAs involve information that was mixed and  
2 belong to another consumer?

3 A. Yes.

4 Q. And so they -- those files also had some inaccurate  
5 collection accounts that you believe belonged to someone else.  
6 Correct?

7 A. They did, but they never mixed my Social or my birth date,  
8 the real personal information.

9 Q. Didn't they in fact have some of the exact same collection  
10 accounts on your file that appeared in the Equifax credit file?

11 A. Possible. I don't know.

12 MS. SUMNER: Well, your Honor, if I can approach the  
13 witness with an exhibit that we marked previously and provided  
14 to you as Defense Exhibit 138.

15 THE COURT: Has defense counsel seen -- I'm sorry,  
16 plaintiff's counsel?

17 Show it to them further. And, yes, you may approach.

18 MS. SUMNER: Thank you. Actually, if Mr. Lewis can  
19 hand it up -- Mr. Lewis -- Mr. Perling.

20 MR. PERLING: Thank you.

21 (Witness handed document.)

22 MR. PERLING: I have another copy for the Court.

23 THE COURT: I don't need one yet.

24 Go ahead.

25 BY MS. SUMNER:



Miller - X

161

1 Q. What has been marked as Defense Exhibit 138, do you  
2 recognize this?

3 A. Yes.

4 Q. Is this an Experian credit report?

5 A. Yes.

6 Q. And is it dated January 26, 2009?

7 A. Yes.

8 Q. And if you flip through that credit report, do you see  
9 that there are Columbia Collections accounts?

10 A. Um-hmm.

11 Q. Are these some of the same accounts that you were seeing  
12 on the Equifax credit file?

13 A. The Columbia ones are.

14 Q. That's correct. So those are the same problem accounts.  
15 Correct?

16 A. Well, I assume so. They're both -- they're Columbia. I'm  
17 not looking at both things side by side. But --

18 Q. Ms. Miller, do you agree with me that the Experian,  
19 Equifax files both had Columbia Collection accounts that you  
20 disputed?

21 A. I assume so.

22 Q. Well, can you see that in front of you? That this has  
23 Columbia Collection accounts?

24 A. Well, it does have Columbia. But I don't know if that's  
25 exactly the same as the other ones. I mean, there was like 20

Miller - X

162

1 of them.

2 Q. My question to you, Ms. Miller, is do you agree with me  
3 that both credit files had disputed Columbia Collection  
4 accounts on the file?

5 A. I get your question. Sorry. Yes.

6 Q. That's all right.

7 And if you flip through, are there a number of other  
8 inaccurate accounts included on this credit file?

9 A. Yes.

10 Q. And in fact if you flip to the back page of this file --  
11 actually, it's the last couple of pages, did you prepare a list  
12 of multiple incorrect information on this Experian credit file?

13 A. Yes.

14 Q. And so that would include, from the last couple of pages,  
15 starting with the Miller No. 290, a Clackamas Circuit Court  
16 account number. That's incorrect? Were you disputing that?

17 A. Yes. Sorry.

18 Q. And following that, there were other -- there were a  
19 couple of other county accounts that you were also disputing?

20 A. Right.

21 Q. And on the following page, that continues with another  
22 Clackamas City recorder, as well as a couple of Columbia  
23 Collection accounts. Correct?

24 A. Yes.

25 Q. And if you go to the next page, there are two more

Miller - X

163

1 Columbia Collection accounts? Is that correct? As well as a  
2 Credit Protection Association account?

3 A. Yes.

4 Q. And then following the next page, you also dispute an ER  
5 solutions account.

6 A. Yes.

7 Q. And you dispute a Geo Recovery Group account?

8 A. Yes.

9 Q. And a Professional Credit Services account?

10 A. Yes.

11 Q. So in January of 2009, is it fair to say that you were  
12 having significant problems with inaccurate information on your  
13 Experian credit file?

14 A. I disputed them, yes.

15 Q. And you were frustrated and stressed by Experian at this  
16 point?

17 A. Yes.

18 Q. And how many times did you contact Experian, to try to get  
19 this worked out? Do you recall?

20 A. As I recall, just the once.

21 MS. SUMNER: Okay. If -- your Honor, if we can pass  
22 up another exhibit. It's Exhibit 139.

23 THE COURT: Yes.

24 MS. SUMNER: Marked for identification. If you can  
25 hand that to co-counsel, Mr. Perling. And if you would hand

Miller - X

164

1 that up to the witness, Mr. Perling.

2 If he may, your Honor?

3 THE COURT: Yes.

4 MS. SUMNER: Thank you.

5 (Witness handed document.)

6 BY MS. SUMNER:

7 Q. Ms. Miller, I'll ask you to take a look at that letter.

8 Do you recognize it?

9 A. (Pause, referring.) Yes.

10 Q. Is that a letter that's dated February 2nd, 2009, to -- to  
11 Experian from you?

12 A. Right.

13 Q. And does it state, at that point, that you were writing  
14 for the third time to dispute inaccurate information?

15 A. Yes.

16 Q. And does it also state that this has been very frustrating  
17 and stressful for you?

18 A. Yes.

19 Q. And do you recall how many times you contacted TransUnion  
20 about problems that you were having on their credit file?

21 A. No, but I have notes on all of this. So I -- which I  
22 didn't look at because I didn't know I was supposed to.

23 So I did keep track of -- like I had told you, I had  
24 documented this whole process. So -- but I don't recall,  
25 because I haven't reviewed that information.

1 Q. Is it fair to say that you also contacted TransUnion on  
2 multiple occasions to also dispute inaccurate information on  
3 your TransUnion credit file?

4 A. I couldn't tell you, without looking at my notes.

5 Q. But you sued TransUnion because of the problems you were  
6 having with them. Correct?

7 A. Yes.

8 Q. And you alleged that TransUnion caused you damages.  
9 Correct?

10 A. Yes.

11 Q. And you alleged that Experian caused you damages.  
12 Correct?

13 A. Yes.

14 Q. And didn't you testify in your deposition in this matter  
15 that they caused essentially the same types of damages that you  
16 are claiming Equifax has caused you?

17 A. They did not cause me the same stress. Because my -- I  
18 felt more secure that my social and birth date and private  
19 information was more secure than with Equifax.

20 Q. Ms. Miller, did you seek emotional distress damages from  
21 TransUnion and Experian when you sued them?

22 A. I don't really remember what was in --

23 Q. Do you know what damages you asserted against them in the  
24 lawsuits?

25 A. I -- I have not -- I haven't read that in a couple of

1 years, so I don't remember exactly what was written.

2 Q. It's difficult for you to distinguish between the  
3 lawsuits, isn't it?

4 A. Not really.

5 Q. But you can't recall the specifics of the lawsuits that  
6 you filed against TransUnion and Experian?

7 A. Well, it's been four years, so I don't remember the  
8 specifics.

9 Q. And you've acknowledged, though, that you can't  
10 distinguish between the stress that that -- those CRAs caused  
11 you and what Equifax has caused you. Correct?

12 A. No, I can distinguish the difference. I was much more  
13 concerned and worried and stressed and out of control and in a  
14 box and trapped by the experience I went through with Equifax.

15 Q. Okay. And you recall being deposed in this action.  
16 Right?

17 A. Yes.

18 Q. And that was on June 25th, 2012?

19 A. Right.

20 Q. And do you recall testifying that Experian caused you  
21 stress and frustration, when you testified at that time?

22 A. I don't -- yes. I mean, I -- they did.

23 Q. Okay. And you also recall testifying that TransUnion  
24 caused you stress and frustration?

25 A. Yes.

1 Q. Now, you settled with TransUnion and Experian, towards the  
2 end of 2009. Correct?

3 A. Correct.

4 Q. And even when you learned that Equifax had included  
5 information on your credit file that did not belong to you,  
6 your attorney didn't contact Equifax at that time, although  
7 they were dealing with TransUnion and Experian. Correct?

8 A. I'm sorry. I missed that question.

9 Q. Okay. You learned that Equifax had included some  
10 incorrect or inaccurate information on your credit file at the  
11 time that you were negotiating settlement with TransUnion and  
12 Experian. Right?

13 A. Right.

14 Q. Okay. And your attorney didn't contact Equifax at that  
15 time to let Equifax know of the problems that you were having  
16 with your credit files. Correct?

17 A. Not that I'm aware of.

18 Q. And you didn't inform Equifax, in your communications with  
19 Equifax, that you had experienced mixing of your information  
20 with other individuals by both TransUnion and Experian. Right?

21 A. I didn't inform who?

22 Q. Equifax.

23 A. Right. I'm not sure why I would.

24 Q. And then you were still experiencing some problems with  
25 Experian in 2010. Correct? Even after you had resolved that

1 lawsuit?

2 A. Right. There was one -- one of those liens that somehow  
3 didn't get removed.

4 Q. And a lien, with -- would you consider that to be  
5 derogatory information on your credit file?

6 A. Yes.

7 Q. Now, you mentioned that you were unable to co-sign for --  
8 was it overdraft protection on that KeyBank account?

9 A. Yeah, I think on one of them.

10 Q. Okay. Ultimately, was -- was this an account that  
11 belonged to somebody else? Your son, perhaps?

12 A. It was a joint account.

13 Q. Okay.

14 A. But his --

15 Q. Were you able to obtain overdraft protection?

16 A. My husband ended up co-signing.

17 Q. Now, you never actually saw the credit report that was  
18 issued to KeyBank. Correct?

19 A. I just saw the letter that was in the notebook.

20 Q. I understand you've got a letter, but my question goes to  
21 the credit report.

22 The credit report was not attached to that letter.

23 Correct?

24 A. Correct.

25 Q. So you've never seen the actual credit report --



1 A. No.

2 Q. -- that may have been issued?

3 And you don't know what credit score may have been  
4 provided to KeyBank. Correct?

5 A. Right.

6 Q. And at this point, in all of the documents that you have  
7 been walking through today, you don't have any copies of any  
8 credit reports that were provided to other companies. Correct?

9 A. Right.

10 Q. Okay. And you don't have any documents which reflect  
11 credit scores that may have been provided to other companies.  
12 Correct?

13 A. Correct.

14 Q. Now, during 2011, before you sued Equifax, you were able  
15 to obtain credit. Correct?

16 A. Say that again.

17 Q. During 2011, before you sued Equifax, during the time  
18 frame that you said you were experiencing all of these problems  
19 with Equifax, you were able to obtain credit. Correct?

20 A. No.

21 Q. Do you recall testifying in your deposition that you  
22 opened an American Express account that year?

23 A. Oh, right. Sorry.

24 Q. And that was through a Costco. Correct?

25 A. Yes.

Miller - X

1 Q. Okay. So you didn't have any problems opening that  
2 account in 2011, did you?

3 A. I -- not that I recall.

4 Q. All right. And during that time -- that was the time when  
5 you are -- believe that Equifax still has your information  
6 merged with another consumer. Correct?

7 A. Right.

8 Q. And with the American Express account that you opened at  
9 Costco, you don't know if American Express used a credit  
10 report, do you?

11 A. Right. I don't know what they based that on.

12 Q. Okay. You never saw any copies of any credit reports or  
13 any credit scores. You just know you were able to obtain  
14 credit in 2011. Correct?

15 A. Correct.

16 Q. Now, do you recall stating in your deposition that the  
17 reason you sued Equifax was to get your credit report clear?

18 A. Yes.

19 Q. Okay. And that was what you wanted out of this lawsuit,  
20 was to get that information corrected?

21 A. Right. And -- and to get my Social Security number where  
22 it's supposed to be.

23 Q. All right. And Equifax did in fact remove the incorrect  
24 information after the lawsuit was filed. Correct?

25 A. Four months after, yes.

Miller - X

1 Q. Okay. So if I can ask you to look at Exhibit No. 112 in  
2 your notebook.

3 Let me know when you're with me.

4 A. Okay.

5 Q. Okay. Do you recognize what this is?

6 A. Yes.

7 Q. Is this a credit disclosure to you on January 5th, 2012,  
8 from Equifax?

9 A. Yes.

10 Q. And does it include a copy of your credit report at that  
11 time?

12 A. Yes.

13 Q. All right. And is this a copy of your clean credit  
14 disclosure report, so that it no longer includes the  
15 information that you had disputed?

16 A. It looks like it is, yes.

17 Q. And have you in fact reviewed this credit report at the  
18 time that you received it, to -- to make sure that it was clear  
19 and you were satisfied that it was accurate?

20 A. I believe so.

21 Q. Now, you have mentioned a couple of lost opportunities, I  
22 think, is the way that Mr. Baxter put it. That you didn't --  
23 concerning, I believe, a garage/shop. Is that right?

24 A. Yes.

25 Q. All right. But you didn't apply for any credit to build a

Miller - X

1 garage/shop during the 2009 to 2011 time frame. Correct?

2 A. Correct.

3 Q. And no creditor ever turned you down concerning an attempt  
4 to take out a loan for that purpose during that time?

5 A. The times that we had -- that I had co-signed on, just a  
6 few basic little things, had been denied. So we just weren't  
7 going -- just didn't try.

8 Q. I'm sorry. I don't mean to interrupt you. Are you  
9 finished?

10 A. Yeah.

11 Q. Okay. So you didn't attempt to try to obtain credit at  
12 that time?

13 A. Right.

14 Q. But you had attempted to get an American Express card in  
15 2011, and you were able to get credit in that regard. Correct?

16 A. (No response.)

17 Q. So you don't know if you had gone out and applied for  
18 credit, like you did the American Express card, whether you  
19 might have received credit during that time. Correct?

20 A. I just assumed that I wouldn't be able to get credit.

21 Q. And you don't know if you had applied for a refinancing  
22 during that time whether or not you would have obtained credit.  
23 Right?

24 A. Right. I never tried.

25 Q. And you don't know whether you would have been denied if

Miller - X

1 you had applied for credit to purchase -- I think you had  
2 mentioned purchases for your brother. Correct?

3 A. Right. We didn't attempt. I was afraid we would be  
4 denied.

5 Q. But that attempt was also -- or, I guess, when you were  
6 considering that, that was in 2011, when you had obtained  
7 credit for an American Express card. Correct?

8 A. I don't really remember the exact dates. I couldn't say  
9 for sure if it was before or after.

10 Q. But you recall it was in the same basic time frame.  
11 Correct?

12 A. I just assumed, with the Costco thing, that I had been a  
13 customer of Costco for a long time, and it was more of an  
14 upgrade on their membership. So I -- I don't really know how  
15 that worked.

16 Q. And you also assumed that others wouldn't give you credit,  
17 but you didn't actually take steps to try. Right?

18 A. Right.

19 Q. Now, you've asked some friends and family members to  
20 testify at trial this week. Correct?

21 A. Yes.

22 Q. Okay. And these are people that you have identified could  
23 help explain some of the emotional distress that you were  
24 feeling during this time?

25 A. Right.

1 Q. Now, these people are aware -- and I say friends and  
2 family, and maybe a co-worker, too. Is that correct?

3 A. I think they're all --

4 Q. Friends and family?

5 A. Yeah.

6 Q. Okay. Now, these individuals know about your experience  
7 because you told them. Right?

8 A. Right.

9 Q. So they -- they -- are they people that you're concerned  
10 about will talk to others in the community about this problem  
11 that you had?

12 A. No.

13 Q. Okay. So -- but you chose to share the information with  
14 them about your experiences not only with Equifax but also  
15 problems with Experian and TransUnion. Right?

16 A. Right. I told quite a few friends they needed to check  
17 their credit report. I didn't give everybody details. But  
18 I -- as is advertised in information you read, that you should  
19 check your -- with the credit companies, annually. And I --

20 Q. You weren't concerned, by telling that, that you were  
21 harming your reputation with respect to them, were you?

22 A. These were my friends, and I was concerned for them. So I  
23 wanted to share my experience.

24 Q. And you didn't -- other than perhaps your husband, you --  
25 with your friends, you did not share with them your actual

1 credit report?

2 A. Correct.

3 Q. So they were aware that you were having credit report  
4 issues, but you didn't share the details of exactly what was  
5 going on with each credit report and each credit reporting  
6 agency. Correct?

7 A. Depends on what you would define as "details."

8 Q. Did you show them your credit reports?

9 A. I did not show -- physically show them my credit reports.

10 Q. Now, you've alleged that Equifax caused you some stress  
11 and frustration, but you acknowledge that you also were  
12 experiencing stress and frustration due to TransUnion and  
13 Experian as well. Correct?

14 A. Right. This has been going on since 2008. So it was a  
15 long -- long time of frustrations and stress, from all the  
16 different sources.

17 Q. And other possible sources of stress as well, right?  
18 In -- in terms of your daily life, stress caused by work,  
19 perhaps?

20 A. I'm sure everybody here has a busy life, a busy schedule,  
21 and stress.

22 Q. So it wasn't -- didn't you have like an issue with a  
23 department or a division of your work that was eliminated at  
24 some point during this time?

25 A. I think that was after, when I changed jobs.

1 Is that what you're referring to?

2 Q. There was a time that your department or division was  
3 eliminated, yes, and you had to change your position.

4 Did that cause you stress?

5 A. Of course.

6 Q. Now, have you been prescribed any medication for stress  
7 that you might have been experiencing during this time frame?

8 A. No.

9 Q. And have you taken over-the-counter medications to deal  
10 with the stress that you were experiencing?

11 A. No.

12 Q. And you've never had any physical problems because of  
13 anything associated with Equifax. Correct?

14 A. Correct.

15 Q. And you're not claiming that Equifax caused you any  
16 financial harm. Correct? You were focused on emotional  
17 distress, or what's also known as noneconomic damages?

18 A. Right. And the other fair credit issues that were  
19 ignored.

20 Q. And have you calculated an amount of money that you think  
21 you are due as a result of the stress?

22 A. No.

23 MS. SUMNER: Your Honor, may I have one moment?

24 Thank you.

25 BY MS. SUMNER:



Miller - X

1 Q. Ms. Miller, do you still have Exhibit 136 in front of you?

2 Oh, it's not. I'm sorry.

3 MS. SUMNER: Your Honor, I guess I thought this was  
4 the same one as -- may we pass that up?

5 THE COURT: Yes. Yes, you may. And show it to  
6 counsel, please.

7 MS. SUMNER: Show it to opposing counsel and  
8 Ms. Miller.

9 Thank you.

10 (Witness handed document.)

11 BY MS. SUMNER:

12 Q. Ms. Miller, if I can ask you to take a look at this  
13 exhibit that's marked at Defendant's Exhibit 136, dated  
14 February 16, 2008.

15 Do you recognize this?

16 A. Yes.

17 Q. And is this an Experian credit disclosure to you?

18 A. Yes.

19 Q. And if I can ask you to turn to the third page of this  
20 exhibit, there are a number of addresses on this credit file  
21 that you are disputing?

22 A. Yes.

23 Q. And if I can also ask you to -- to refer to the social  
24 security number that is listed on this credit file, that is  
25 circled. Is that your handwriting that says "incorrect"?

1 A. Yes.

2 Q. Is that an incorrect Social Security number that is  
3 included on this credit file?

4 A. Yes.

5 Q. So, in fact, Experian was having some difficulty with the  
6 credit -- with the Social Security numbers on your file.

7 Correct?

8 A. Yes.

9 Q. Thank you.

10 MS. SUMNER: Your Honor, nothing further. Thank you.

11 THE COURT: All right. Redirect?

12 MR. MICHAEL BAXTER: Thank you.

13 REDIRECT EXAMINATION

14 BY MR. MICHAEL BAXTER:

15 Q. (Pause.) Are you satisfied with the way that Experian and  
16 TransUnion handled your disputes?

17 A. Well, I -- I -- I haven't really reviewed that part of all  
18 of this, because that's been so many years ago. But -- and,  
19 obviously, I've forgotten some of it. But I was able to get it  
20 resolved, whereas I -- I wasn't even able to get any response  
21 or correction from Equifax. So it looks like it did take me  
22 some work, but --

23 Q. Okay. Would you turn to Exhibit 24, page 8. Tell me when  
24 you're there.

25 A. Okay.

1 Q. Do you see any inquiry that -- that Costco or American  
2 Express sought credit information from Equifax during -- from  
3 February 2010 to July 2011?

4 A. It doesn't appear to be any on here.

5 Q. After you -- after Equifax resolved your credit reporting  
6 problem, did you -- are you and your husband in the process of  
7 building the shop for your husband?

8 A. Yeah. We've started just the preliminary -- we got a  
9 quote and had -- PGE's been out. Just some of the, you know,  
10 beginnings.

11 Q. Was it humiliating to not be able to assist your son in  
12 getting a credit line in 2010, when you applied from KeyBank?

13 A. Yeah. It was pretty embarrassing to be at your local bank  
14 and have everyone find out that supposedly you have bad credit.

15 Q. Was -- your TransUnion credit report clean by 2010?

16 A. Which one did you just --

17 Q. TransUnion.

18 A. Yes, as I recall.

19 Q. And was Experian clean, other than the one lien that  
20 occurred September -- I believe September of 2010? But was  
21 it -- was it your -- your Experian credit report clean  
22 throughout 2011?

23 A. Yes.

24 MR. MICHAEL BAXTER: That's all the questions I have.

25 THE COURT: All right. Thank you, Ms. Miller. You

Colloquy

180

1 can step down.

2 THE WITNESS: Thank you.

3 THE COURT: Ladies and gentlemen, I think we'll call  
4 it a day because it's been a day. We don't need to start a new  
5 witness at this hour.

6 I want to thank you for your attention to this  
7 matter. Let me remind you that this evening, before you come  
8 back to court tomorrow, it's important that you stay away from  
9 these issues. Don't do any research. Don't let anyone talk  
10 with you about these matters.

11 I wanted to point out to you something that's  
12 probably already obvious to you. The exhibits in the case  
13 contain private information about Ms. Miller, her Social  
14 Security number, and other things. They're before you because  
15 they're actually relevant in this case and you would need to  
16 see them in order to decide the case. But, obviously, those  
17 are not matters of public record, and they won't be part of the  
18 public record at the end of the case. So you'll be able to --  
19 we'll take those exhibits from you. They'll be safeguarded. I  
20 just wanted you to know that we're not being care-free about  
21 that matter. It's important, but you have to have it in order  
22 to determine the case. All right?

23 Now, tomorrow morning, we're going to start with you  
24 at nine o'clock. I'll be working with the lawyers ahead of  
25 time. I need you in the jury room, ready to go at nine

Colloquy

181

1 o'clock. You can come after -- or any time up to nine  
2 o'clock -- I should say, starting at around eight o'clock,  
3 staff will be here to let you in. So you're welcome to do  
4 that. And, again, in the morning, if you would like to bring  
5 your own beverage, that's fine. But we'll have coffee from the  
6 cafe downstairs, in the morning.

7 Now, any issues or concerns? Is everybody good?

8 Leave your notebooks at your chair, leave your notes  
9 at your chair.

10 Okay, folks, thank you. You're free to go for today.  
11 See you all tomorrow, rusted [sic] and attentive, ready to go.  
12 Right? Right. Okay.

13 Okay. Follow Ms. Boyer, please.

14 Not rusty. Rested.

15 (Jurors exit.)

16 THE COURT: Okay. You can go ahead and step down,  
17 Ms. Miller.

18 Okay. And everyone can be seated.

19 Counsel, I have a second draft of the jury  
20 instructions, which I just think it's best if you toss the  
21 first draft.

22 There were lots of issues with it. This is a better  
23 working draft. I have one for all of you. Ms. Gamboa, my law  
24 clerk, will send it to you. I have a second draft of a verdict  
25 form. So you can disregard what I wrote up on my own, this

Colloquy

182

1 morning. These are the forms from which I would like you to  
2 work now.

3 In fact, I would like you to take about ten minutes  
4 on your own. I'll come back out about five o'clock. We'll be  
5 off the record. I would just like to do some preliminary  
6 review, to get a sense of whether we have issues. And then to  
7 the extent we can resolve some, we will be able to do that.

8 I have a 5:15 conference call, so I can't work later  
9 than that with you on instructions, but I'm hoping we might be  
10 able to get right to the heart of some things and we can make  
11 some progress there. The sooner we get these settled, the  
12 better. So I'm going to excuse Ms. -- what's your name --  
13 LeGore, for the night, assuming that the plaintiff has nothing  
14 for the record at this point.

15 MR. JUSTIN BAXTER: Not right now, Judge.

16 THE COURT: And may she leave? Do you have anything  
17 for the record?

18 MS. SUMNER: We do not. Thank you.

19 THE COURT: We'll need you at 8:30 in the morning.  
20 Thank you.

21 So we're off the record.

22 (Court adjourned.)

Certificate

183

--oOo--

I certify, by signing below, that the foregoing is a correct transcript of the oral proceedings had in the above-entitled matter this 1st day of August, 2013. A transcript without an original signature or conformed signature is not certified. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

/S/ Amanda M. LeGore

AMANDA M. LeGORE, RDR, CRR, FCRR, CE